



# Wartime Atrocities and the Politics of Treason in the Ruins of the Japanese Empire, 1937-1953

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Dissertation Advisor: Professor Andrew Gordon

Konrad Mitchell Lawson

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**ABSTRACT**

This dissertation explores the relationship between violence and betrayal in retribution against military and police collaborators who helped maintain Japan's wartime occupations up until its defeat in 1945. Looking at the approaches taken in the colonies of British Asia, postwar treason trials in the Philippines, and Chinese Communist approaches in wartime and postwar Shandong province, this study argues that the laws and rhetoric of treason were deeply flawed tools for confronting the atrocities of war. At the very moment that war crimes trials were defining a set of acts that constituted crimes against all humanity, around the world thousands of individuals who helped perpetrate them were treated as primarily guilty of crimes against the nation. Each of the chapters in this work examines the costs and consequences of this for postwar societies on the eve of decolonization and civil war.

Throughout the territories under Japanese occupation, locally recruited military and police forces comprised the largest category of individuals to face accusations of treason in the aftermath of war, but were also those most likely to be complicit in atrocities. Among the ranks of the disloyal, they were both the most useful as well as the most dangerous to postwar regimes and almost always separated out from other accused collaborators. Their treason was often treated as a disease of the heart which, once cured, allowed them to be deployed once more. Attempts to try them for their betrayal often faced destabilizing political opposition, especially in cases where their wartime actions were carried out in the name of independence from colonial rule, and were almost always reduced in scale to focus on those accused both of treason and atrocities. Marred by the politics of betrayal, the resulting hybrid proceedings failed to achieve a reckoning with wartime massacres and torture.

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## NOTES AND ABBREVIATIONS

### Notes

Chinese and Japanese names are shown with family names preceding personal names. Macrons are generally included but left out for well-known cities and locations.

I have used full form characters for Chinese, in order to maximize its readability for scholars familiar with other East Asian languages. For sorting purposes, romanization in citations is provided for authors, but otherwise the characters are retained and translations of them provided.

### Abbreviations

AFPFL	- Anti-Fascist People's Freedom League (Burma)
BoC	- Philippine Bureau of Constabulary (under the Japanese occupation)
BDA	- Burma Defense Army (Previously the BIA)
BMA	- British Military Administration
BNA	- Burma National Army (Previously the BDA)
BIA	- Burma Independence Army
CCP	- Chinese Communist Party
CIC	- Counter-Intelligence Corps
CIT	- Combat Interrogation Team (US and Chinese-occupied Burma)
INA	- Indian National Army
IMTFE	- International Military Tribunal for the Far East (Tokyo War Crimes Trials)
MPAJA	- Malayan Peoples' Anti-Japanese Army
NCAC	- Northern Combat Area Command (US and Chinese-occupied Burma)
OSS	- Office of Strategic Services
PBF	- Patriotic Burmese Forces (Previously the BNA)
POW	- Prisoner of war
RIN	- Royal Indian Navy
SACSEA	- Supreme Allied Commander South East Asia
SEAC	- South East Asia Command
USAFFE	- United States Army Forces in the Far East (Philippine-based guerrillas)

### Publication and Archive Abbreviations

BSI	- <i>Burma: The Struggle for Independence</i>
JACAR	- Japan Center for Asian Historical Records
TOP	- <i>Transfer of Power</i>
TF	- <i>Towards Freedom</i>
SZ	- 山東資料館 Shandong Provincial Archive
SSZ	- 山東省省情資料庫 Shandong Provincial Information Resource Depository <a href="http://sd.infobase.gov.cn/">http://sd.infobase.gov.cn/</a>
SGLDZX	- 山東革命歷史檔案資料選編 Selection of Materials from the Archives of the History of the Revolution in Shandong Wartime Atrocities and the Politics of Treason in the Ruins of the Japanese Empire, 1937-1953



## Introduction

The end of the Second World War was also a momentous beginning in efforts to punish the crimes of war. A combination of new laws, a brief but powerful confluence of international interests, and most importantly, a geographically dispersed scale of violence unprecedented in human history gave rise to a collection of both international and national war crimes tribunals which confronted the horrors of war and occupation, for the most part, in the name of humanity. Flawed though they were and criticized by some as mere exercises in victor's justice, no one can deny their impact on the entire postwar development of international humanitarian law, the rise of human rights discourse, and the birth of transitional justice as a distinct realm of political activism, legal innovation and academic debate. If these early postwar trials, from Nuremberg to Tokyo and from Norway to the Philippines invoked a universalist vocabulary, the accused were limited, for the most part, to the citizens of a relatively small number of recognized aggressor nations. That the triumphant Allies did not supply suspects for these trials from their own ranks has been often noted, but it was Allied bomber pilots and Soviet foot soldiers whose presence were most sorely missed by critics. Less attention was given by contemporaries and historians since to the nationals of occupied lands who perpetrated atrocities in the service of the occupier.

Few marked the absence in the great postwar tribunals of Chinese or Burmese soldiers who fought side by side with Japanese forces, or argued that Korean and Indian police who helped torture fellow Koreans or Malayan prisoners might belong together with the accused guards of prisoner of war camps. Many of the crimes that these allies of the defeated powers could have been charged with such as torture, rape, arson, murder and massacre, differed little from those committed by the mostly German and Japanese combatants tried as war criminals. Around the world the fate of most of these

local nationals was determined by a different set of rules, and their crimes were condemned and remembered within the bounds of a radically different political discourse. With some important exceptions, most of these forgotten “war criminals” were merged into the much larger category of collaborator, and potentially charged with the highest crime of nations: treason.

These atrocities of treason were more frequently interpreted by wartime resistance members and early postwar regimes as expressions of their betrayal rather than simple barbarity; their violence was seen as an affirmation of their adherence to a despised enemy rather than a rejection of human dignity. Thus anchoring their crimes in the mental realms of fidelity and treachery, two seemingly contradictory approaches emerged: the attempt to punish the atrocities of collaborators within the highly political domain of treason prosecutions and an alternative approach that emphasized the reformability of these otherwise valuable human resources who had been poisoned by their association with the enemy. This dissertation examines this peculiar politics of retribution in several areas affected by Japanese occupation: the British Empire in Asia, the Philippines, and Shandong, China.

In all of these places, the relationship between the crimes of betrayal and occupation violence developed against a complex backdrop of anti-colonial struggle or civil war. In every case there was a clear tendency to separate out military and police forces that supported the Japanese wartime empire from other accused traitors.<sup>1</sup> While these were the collaborators who were the most likely to have been complicit in atrocities during the course of occupations and war, they were also usually the most numerous in number, and thus both more useful and dangerous to postwar regimes. In some late colonial settings such as India and Burma, these wartime forces were also potentially admired for

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<sup>1</sup> Though sometimes informers were included with them.

their anti-colonial credentials.<sup>2</sup> Plans to try many or all of these military, police, and other security forces for their wartime treason were either abandoned or, more often, transformed into far smaller-scale treason trials for only those who were accused of atrocities. The fact that these proceedings that punished crimes of violence remained within a broader process of retribution against treason and, in the case of the Philippines, some special characteristics of the treason law itself, made this an even more flawed environment in which to punish the crimes of war than the various imperfect war crimes trials for enemy nationals that were being carried out at the same time. Finally, efforts to reform and reintegrate thousands of members of these forces, including the Indian National Army, the Burma National Army, the Philippine Bureau of Constabulary, and various Chinese armies who fought for Japan were aided by the portrayal of their crimes primarily as a form of curable disease, or else as victims of deception who could purge their treason with patriotic acts of penitence.<sup>3</sup>

The war with Japan, the brutality of its occupations, and the simultaneity of the mass processes of retribution after its defeat help bind the disparate contexts considered here together. Though certain patterns of experience emerge from the comparative nature of this work, the chapters that follow also reveal some of the ways the politics of retribution after the Second World War had transnational and global characteristics. Throughout the work I have endeavored to “emphasize the persistent differences” that make these contexts unique and keep a comparative historian honest.<sup>4</sup> Both the scale and forms of wartime violence, as well as the evidence available against those accused of

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<sup>2</sup> This was not the case, however, in the Philippines. See Chapter Five.

<sup>3</sup> Only in one case mentioned briefly in Chapter Three, the mostly Sikh police of Malaya, was there a large-scale purge. There were also Nationalist purges of police in at least some areas of postwar China, but that case has not been included in this dissertation.

<sup>4</sup> Charles S Maier, *The Unmasterable Past: History, Holocaust, and German National Identity: With a New Preface* (Cambridge, Mass: Harvard University Press, 1997), 70.

committing atrocities vary significantly, and this work is in no way an attempt to relativize the severity of the wartime experience, or engage in a calculus of moral responsibility. Instead, this work seeks to open new avenues of discovery by highlighting the impact and costs of the particular ways in which the atrocities of war were addressed by resistance forces and victorious regimes.

Much of the retribution before and after the final days of the Second World War was in the form of summary justice. These acts of revenge were against individuals, suspect groups, or whole communities. They were carried out by members of organized resistance forces, by victims, and their relatives. In other cases, suspected collaborators may have thought their own wartime conduct would be forgotten if they joined the orgy of retributive violence. Retribution of this kind could often mask a grab for political power, or even more often, personal or family strife. It could be carried out without inconvenient court records, witness testimony, or the rebuttal of the accused. These extra-judicial killings are notoriously difficult to study. Through anecdotal evidence, historians have determined the fact that retributive violence was comparatively common in France, and less so in the Netherlands; rare in southern Korea, but on a terrifying scale in British Malaya. However, usable statistics are almost non-existent, and chasing these claims to their footnotes often yield a few diaries as evidence for generalizations covering highly diverse regions.

More than judging the scale, determining the motivations behind the violence poses an even bigger challenge. Studies strongly rooted in a locality that take into account the complex web of relationships in a given area remain the best way to address the dynamics of this kind of widely dispersed violence after war, and these are still few in number for the areas once under Japanese occupation.<sup>5</sup> Emerging claimants on state power in the aftermaths of war can, however, have a

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<sup>5</sup> The best work on this specifically for the Japanese occupation experience has been done on the Philippines. See Alfred McCoy, "Politics by Other Means: World War II in the Western Visayas" in A. W. McCoy ed. *Southeast Asia under Japanese occupation*. (New Heaven: Yale University Southeast Asia Studies), 158-203 and Satoshi Ara "Collaboration and Resistance: Catalino Hermosilla and the Japanese Occupation of Ormoc, Leyte (1942-1945)"

powerful impact on the wider processes of retributive violence. When considering the case of Communist controlled areas of Shandong province in Chapter Seven, the role of Party policy in facilitating or restraining violence will be explored, but for the most part, this work will focus on the politics of retribution which play out in the courts and institutions of state and military power.

### *Japanese Empires*

The wars of Japanese expansion and the momentous transitions which accompanied Japan's collapse in 1945 are what unite the chapters of this work. When I speak of treason, for the most part it is treason in the form of a collaboration with Japanese military forces. When I speak of violence, in greater measure, I refer to the violence committed in the context of Japanese occupations or the continuities in that violence following the end of those occupations. However, the anchoring role played by the expansion and collapse of the Japanese empire in this dissertation is in one sense deceptive. The politics of retribution in each chapter overlaps significantly with scholarship deeply informed by three themes in which the Japanese empire plays a very different role: 1) the response to Western imperialism in Asia, 2) the unique characteristics of the Japanese colonial experience, and 3) the development of agrarian revolutions and the emergence of Cold War divisions in Asia.

After invading northeast China in 1931 and establishing the client state of Manchukuo (滿洲國), the Japanese Army continued to weaken Chinese sovereignty in northern China through a policy of supporting autonomous breakaway administrations. After the outbreak of a full scale Sino-Japanese war in 1937, when temporarily united Communist and Nationalist Chinese forces

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*Philippine Studies* vol. 60 no. 1 (Sept. 2011) 33-68. In the Chinese case, there are also a number of works which focus entirely on a single village or community and usually follow it across the course of the revolution, including the Japanese occupation. Two examples of this are Isabel Crook, *Ten Mile Inn: Mass Movement in a Chinese Village*, (New York: Pantheon Books, 1979), and William Hinton, *Fanshen: a Documentary of Revolution in a Chinese Village* (Berkeley: University of California Press, 1966).

refused to allow further encroachment, Japanese forces soon found themselves deeply mired in a bloody stalemate. American pressure, including a full oil embargo, forced Japan to make a choice between a humiliating retreat or a preemptive attack to cripple the U.S. Navy and capture the resource rich colonies of Southeast Asia. The rapid “southern advance” of the Japanese military beginning in December, 1941 swept aside the colonial governments of Burma, Malaya, and the Dutch East Indies. It completed Japanese dominance in French Indochina, subjected a weak, if independent Thai regime, and overthrew a Philippine Commonwealth waiting for its promised independence from the United States. In British India, following a failed attempt to reach a compromise with leading Indian nationalists to secure support for British war efforts at the nadir of Allied fortunes in August, 1942, the Indian National Congress launched a “Quit India” movement. The movement called for an immediate end to colonial rule and colonial authorities responded with a massive round-up of nationalist leaders that led to a powerful outbreak of urban and later rural violence.

For historians of empire in South and Southeast Asia as well as of the nation-states that emerged following decolonization, the Pacific War from 1941 to 1945 is an important, if brief, transitional moment which serves primarily to inform a narrative of the fall of Western imperialism. In the historiography of Japanese empire, however, these final years of expansion were a desperate attempt by the empire to preserve itself but, even more, a culminating moment of experimentation. This took place at a time when, across the wartime empire, every last resource was being extracted, forced labor conscripted on a mass scale, and counter-insurgency campaigns were growing more and more desperate. Nevertheless, historians have seen this as a moment when alternative Japanese visions for a new political and cultural order in Asia came at least one step closer to the promises of propaganda. Japanese military leaders sometimes supported the anti-colonial aspirations found throughout Southeast Asia. As defeat loomed, occupation governments increasingly backed this

support with limited devolutions of power, including nominal independence for Burma and the Philippines in 1943.

This experience, especially in Southeast Asia, left a complex legacy. The costs and consequences of trying murder, torture, and complicity in wartime atrocities through treason trials and other special collaboration tribunals in the early postwar period varied around the world, as did the movements to reform and reintegrate military and police collaborators. At the very least, however, trying individuals for atrocities under the laws of treason in a colonial context posed a particularly troubling phenomenon. It was not merely a question of whether the accused could be expected to maintain wartime loyalty towards their imperial masters. The hypocrisy became particularly glaring in these cases since the treasonous sins were committed in the context of what many saw as a *foreign occupation of a foreign occupation*. Every moment spent emphasizing the horrors of the one—that of the Japanese, could not but help remind everyone of the existence of the other—British, French, Dutch, or American colonial rule, even if the scale of violence and devastation was greater in one than in the other. The effects of the *double occupations* of Asia had a strong impact on the local response both during the war and in the politics of the aftermath of Japan's defeat.

These differing approaches to Japanese occupations and the Pacific War—the Japanese occupation as a deviation from, or catalyst in, a longer story of decolonization on the one hand, and a Japan-centered story that considers the wartime empire as the final rise and fall of certain pan-Asian ambitions on the other, both give rise to two questions of influence that have received much attention. The first asks what impact Japanese occupations and the war with Western empires had upon existing anti-colonial movements and the end of colonialism throughout the region. The second asks what, if any, Japanese occupation institutions and ideas developed in this period may have contributed to the formation of the post-colonial nation-state. Both of these are important

questions, but answers to them have often been limited to studying networks of like-minded individuals, institutional histories, and high politics.

If anything, this dissertation returns to an emphasis on the role of violence. Almost everywhere the Japanese imperial army advanced, atrocities and brutality followed, with the scale of physical violence multiplying as Japan's fortunes faltered and resistance grew. The temporary alliances between anti-colonial forces and Japanese occupation armies should not be recalled without also recalling their complicity in the violence of those occupations, even as the repression of the Western colonial rule they sought to overthrow is recognized. Similarly, when evaluating the lasting influence of Japanese occupation period institutions, it is worth considering the fate of security organs that helped to maintain those occupations, and the individuals who carried out its brutal tasks. At the same time, the differences between the areas of "double occupation" in Southeast Asia, and the emerging postwar societies of China, Taiwan, and Korea must also be taken into account.

In the historiography of Japan's own colonial empire, the issue of postwar continuities of violence has received extensive consideration, no more so than in studies on Korea. Often this discussion builds upon an understanding of a particularly Japanese form of colonialism. Unlike the short occupations of Southeast Asia beginning with the rapid advances of 1941, or the decade and a half of encroachment and military occupation in China from 1931, Japan's colonial rule in Okinawa, Karafuto (South Sakhalin), Taiwan, and Korea stretched across multiple decades and included an evolving policy of assimilation tailored to the circumstances of each. These colonies were in close proximity to the Japanese archipelago and were often tied in deep and complex ethnic and cultural relationships with the metropole. Scholarship on Japanese colonial history, as with studies of Russian imperialism, has often focused upon its unique characteristics and contrasted it with the more frequently juxtaposed empires of France, Britain, and the Netherlands.



If the wars of Japanese expansion are embedded in narratives of the fall of western imperialism in South and Southeast Asia, or its organs of repression analyzed in the context of a uniquely Japanese colonial experience, in another body of scholarship, including the rich historiography on the rise of the Chinese Communist Party, the experience of Japanese occupation is primarily considered in its role as a catalyst for revolution. To a greater or lesser extent, this is true across the former Japanese empire. The massive social disruption of Japanese military expansion, its relatively weak control beyond urban centers of power, and its sudden demise all facilitated the rise of powerful rural revolutionary movements that frequently married calls for agrarian reform with calls for national liberation. If anti-colonial forces sometimes sought to benefit from a “pact with the devil,” and cooperated with Japanese occupiers, others such as the Chinese and Malaysian Communists, the Philippine Hukbalahap, the Viet Minh, and even Korean guerrillas in Manchuria developed valuable military and political experience in the course of their resistance against it. Unsurprisingly, they also refined their own organs of strict discipline and carried out widespread liquidation of enemies justified by a quasi-permanent state of crisis. In these narratives, however, Japan serves as what one might call a *repressive constant*. When Japan is defeated, the role of this constant source of repressive violence is merely swapped out and fulfilled by the reactionary regime that is established in its place: the Nationalist regime in China, the Philippine oligarchy, a US supported right-wing regime in southern Korea, or returning French and British empires, thus justifying the continued challenge to the state posed by the wartime insurgency. For these revolutionary organizations as well as many sympathetic to their cause, the taint of treason serves well when hard evidence of specific atrocities or other acts of overt oppression are not at hand.

### *Chapter Overviews*

The opening chapter expands upon some of the issues brought up in this introduction. It begins with a discussion of the problematic term “collaboration” and some of the costs of adopting it as a framework of research. Instead, this dissertation disaggregates the two primary aspects of acts typically referred to by collaboration, violence and betrayal. The remainder of the chapter provides a broader global overview of the efforts to punish war crimes after the Second World War, and the ways in which military and police allies of the defeated powers were dealt with in Europe.

This is followed by three chapters, composing Part One of the dissertation, which examine the British Empire’s approach to treason and acts of brutality or other forms of illegitimate violence. British policy towards its “Indian renegades,” especially the Indian National Army that fought with the Japanese on the Burmese front, began with an attempt to treat its traitors like men afflicted with a contagious disease, and later evolved into an ambitious policy of mass trials. As widespread opposition to the trials became evident, the thousands of initially planned cases were gradually scaled down and transformed into trials limited to military collaborators with Japan who were also accused of atrocities, especially against British or Indian POWs. This attempt failed with violent consequences within the Indian subcontinent as the trials sparked protests, riots, and even helped inspire a naval mutiny. Despite the shift to focus on atrocities, the most famous opening trial not only retained the highly political crime of treason to deliver a symbolic ruling on the treasonous nature of the Indian National Army, but was among the weakest cases in terms of evidence for accusations of prisoner murder and abuse. Thanks to the failures of this initial trial and the tremendous response it inspired, the belated focus on the brutality of some INA soldiers utterly failed to persuade India that the effort was anything more than a dying empire’s feeble attempt to tarnish one branch of the Indian independence movement.

Chapter Three traces the impact of the evolving British response to the Indian National Army on the cases of many other former British imperial subjects who were guilty of more troubling crimes throughout the Empire, including other “Indian renegades” who helped maintain Japanese military occupations far away from the potential glories of the India-Burma front. In British Malaya, Borneo, Hong Kong, and Singapore, the decision was made to follow the Indian example and limit cases of treason to those which included atrocities, with an exception for the case of informers. While in principle this might have had the laudable effect of creating a direct parallel to the war crimes tribunals of Japanese soldiers being carried out throughout British Asia, the effect was more to further weaken a process which was already low on the priority list for colonial officials. Little detailed evidence of atrocities had been gathered on the hundreds of suspected traitors in custody, whose disloyalty alone was initially sufficient to secure their conviction. The chapter closes by considering the fate of one other group of “Indian renegades” beyond the subcontinent, some of whom faced no mercy at the hand of a vengeful French resistance.

The fourth chapter turns to the case of Burma, where another treasonous army, the Burma National Army, rebelled against the Japanese in time to redeem itself partially in the eyes of the returning British officials. The chapter contrasts the policies of American Counter-Intelligence Corps agents, who pursued Burmese collaborators deep into the jungles of northern Burma, with a returning British administration again considering large scale trials for military collaborators—first for treason and later only for those accused of atrocities. In Burma, the issue was further complicated by the particularly strong ethnic divisions that sometimes shaped wartime violence. Leaving these issues unresolved, the entire process was completely derailed largely thanks to a single inconvenient murder accusation against a traitor-turned-ally who was too important to surrender to trial: Aung San.

Part two of the dissertation shifts away from the British Empire to look at political retribution against military collaborators in the Philippines. Chapter Five outlines the forms of military collaboration with the Japanese occupation in the Philippines and introduces the ways in which the collaboration issue has been framed in postwar Philippine memory. Historical accounts of the trials of retribution against these individuals usually come to an abrupt end in 1948 with the proclamation of a presidential amnesty and the dismantling of the special People's Courts established to try collaboration cases. However, this chapter takes a closer look at the debate in the Philippine legislature over treason trials that ended in the confirmation of the amnesty, which excluded cases of military collaborators and informers. While those accused in cases not covered by the amnesty were directly responsible for some of the most violent acts of the occupation, the structure of the amnesty had the unsettling result of allowing almost all elites—including those who had power over the security organs that supported the Japanese occupation—to go unpunished. Meanwhile, treason trials continued in regular criminal courts for the mostly rural and lower class collaborators who worked in closest proximity with Japanese soldiers and military police in their brutal counterinsurgency campaigns.

The next chapter argues that the highly political crime of treason was most unsuited to punishing war crimes of Filipinos guilty of acts ranging from serving as informants, killing civilians, participating in massacres, or coercing women into sexual slavery for the Japanese military. Crimes of violence committed in the context of treason were, under rules for “complex crimes,” held to the higher requirements for a treason conviction. On the other hand, some individuals were found guilty on determination of their membership in organizations alone, while others, such as many accused Philippine constabulary members, were seen as merely carrying out their policing duties, even if these were under guidance of the Japanese military. Finally, in cases in which Filipinos helped to secure sex

slaves for the Japanese military, their crime was not seen as sufficiently “political in nature” to merit conviction as treason, while other acts of violence and coercion qualified.

The third and final part of the dissertation shifts to focus greater attention on efforts to reform and make use of those who had been reviled and hated for their role in preserving oppressive Japanese occupations. This approach was carried out throughout the areas already covered in previous chapters, though the scale and leniency employed in the efforts differed from case to case. Before the shift to a strategy of prosecution, most captured members Indian National Army were either directly redeployed or given an opportunity to be cured of their treason in a “holiday camp.” Thousands of rehabilitated military collaborators of Burma were allowed to join a new postwar Burmese Army on the eve of independence, and most Philippine Bureau of Constabulary members were merged into the postwar constabulary after passing “loyalty boards,” with little effort made to determine their role in wartime atrocities.

The final chapter looks at a particularly elaborate campaign to secure the wartime defection of military collaborators carried out by the Chinese Communist Party in Shandong province. The Party portrayed its Nationalist competitor as riddled with the remnants of military “puppets” who fought side by side with the Japanese. However, the Party separated its own “traitor elimination” efforts from its “enemy and puppet work” in order to recruit and redeploy the universally reviled military collaborators. The policy of extreme leniency for the poorly trained and poorly armed client armies supporting the Japanese occupation wavered around the time of Japanese surrender. Some military collaborators unlucky enough to surrender or be captured in this transitional period found themselves caught up in a violent campaign of mass retribution against traitors.

### *A Note on Sources*

Part One relies heavily on British imperial sources which come mostly from the perspective of a colonizer evaluating its response to military collaboration with Japan. These include the multi-volume document collections *Transfer of Power 1942-7*, *Towards Freedom: Documents on the Movement for Independence in India*, the five rich volumes of documents in the *Indian National Army: A Documentary Study*, *Burma: The Struggle for Independence 1944-1948: Documents from Official and Private Sources*, and the microfiche collection of the *Indian Political Intelligence (IPI) Files, 1912-1950*. Part Two on the Philippines makes use of U.S. State Department documents in Record Group 59, debates in the microfilm of the Philippine *Congressional Record: House of Representatives*, the *Official Gazette*, and Supreme Court case rulings found in the Philippine Laws and Jurisprudence Databank, or LawPhil (<http://lawphil.net/>). Chapter Seven on the Enemy and Puppet Work Bureau in Shandong, China, makes heavy use of wartime and early postwar Communist Party documents found in the Shandong Provincial Archive, as well as a published multi-volume collection of the archive's documents, *A Selection of Archive Materials on the History of the Revolution in Shandong* (*Shandong Geming Lishi Dang'an Ziliao Xuanbian* 山東革命歷史檔案資料選編). It also uses materials from compiled oral history collections known as *Historical Literature* (*Wenshi Ziliao* 文史資料) and local gazetteers now made available online by the Shandong Provincial Gazetteer Office (山東省地方史志辦公室 <http://sd.infobase.gov.cn/>).

# Chapter 1: Of Collaboration, War Crimes, and Treason

## *Collaboration and its Discontents*

A vile race of quislings – to use the new word which will carry the scorn of mankind down the centuries – is hired to fawn upon the conqueror, to collaborate in his designs, and to enforce his rule upon their fellow-countrymen, while groveling low themselves.

- Winston Churchill (1941)

The scorn of mankind never quite latched onto the new word quisling.<sup>1</sup> Another word has largely taken its place, collaborator. This dissertation is not about the moral dilemmas of collaboration. It is about a politics of retribution in which atrocities are punished as treason. Because it is difficult to speak of the latter without some reference to the former, we must begin with a discussion of that term which, more than any other, stands in the way of the goal of this project. Collaboration is one of those concepts which, like the serpent Ouroboros, circles the world only to devour itself. The more one pursues it, the greater the struggle to prevent it from dissipating completely as a useful category of analysis.

A growing body of scholarship that addresses collaboration as a historical phenomenon often rests upon a form of equivocation, alternately employing the term with one meaning and then another. The most common way this is done is to begin with a specific definition of collaboration as the provision of aid to a foreign occupier, but then elsewhere employ the term in a more general way to describe acts which make one complicit in the violence or oppression of any authority. An illustration of this kind of move is found in a 2012 series of exchanges in the *Journal of Asian Studies*

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<sup>1</sup> The word comes from the name of Vidkun Quisling, the head of the Norwegian fascist Nasjonal Samling party, enthusiastic supporter of the German invasion of Norway in April, 1940, and wartime Minister President from 1942. He was executed for treason in 1945.

on the ethics of collaboration between John Whittier Treat, Timothy Brook, and Michael D. Shin.<sup>2</sup> The main historical cases that each focus upon are colonial Korea and Japanese-occupied China. In his opening piece on an important Korean literary figure who energetically supported the Japanese empire, Yi Kwang-su, Treat introduces us to a wide world of collaboration from the literary to the philosophical, and from the pedagogic to the political. Broadly speaking, there are two kinds of collaboration portrayed: one that occupies a universal moral domain of action and one which is tied to a particular form of illegitimate relationship with an Other. An example of the first is found in his quoting of Milan Kundera's definition of collaboration, "putting oneself voluntarily at the service of a vile power," and Kundera's observation that, "we realize more and more that man's activity is by nature a collaboration."<sup>3</sup> This is a universal collaboration: a sin we all bear when our actions as well as our inaction make us complicit with the crimes of the state or, for example, the injustices of an economic order we help sustain.

However, in choosing a Korean figure such as Yi who argued for complete assimilation with Japan and supported its wartime empire, Treat notes that "collaboration and its associated moral morass recede as an issue—how does one collaborate with oneself?"<sup>4</sup> Here is a collaboration tied to identity; a moral morass that is dependent upon the distinction between the collaborator and the power served.<sup>5</sup> Treat's solution is to turn to the ethical theories of the analytic philosophy tradition,

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<sup>2</sup> Beginning with John Whittier Treat, "Choosing to Collaborate: Yi Kwang-su and the Moral Subject in Colonial Korea" *Journal of Asian Studies* v. 71.1 (2012), 81-102.

<sup>3</sup> Milan Kundera, *The Art of the Novel* (New York: Perennial Classics, 2003), 125.

<sup>4</sup> Treat "Choosing to Collaborate," 91

<sup>5</sup> Treat also discusses Sartre's famous essay "What is a Collaborator." This essay is famous, as Treat points out, for its depiction of collaboration as a "strange mixture of masochism and homosexuality," which supports a "sexual union in which France plays the female role..." However, the full essay shows the same confused depictions of collaboration as a universal phenomenon and one tied to betrayal in the context of a foreign occupation and illicit ties to the Other. It is, for Sartre, a "normal phenomenon" which lies "latent" in peace, but is elsewhere described more generally as anyone who is afflicted by, "that intellectual illness that may be called historicism." This historicism yields a twisted realism which, "leads them to submit themselves to rigorously individual realities: a man,



using a consequentialist approach to pass judgment on Yi's choice to write passionate appeals on behalf of the imperial cause. This approach, however, offers nothing to distinguish the class of immoral acts Yi commits from those of, say, a Japanese colonial official in Korea, or a novelist in rural Japan who calls upon the youth of the countryside to sacrifice their lives for the nation. Are they not all putting themselves at the service of a vile power? Do their actions not lead to negative consequences?

The only meaningful way to distinguish their acts from those of Yi in Treat's moral mechanics is to privilege a loyalty to someone or something, most often the nation. Timothy Brook points this out in his response to Treat, which argues that collaboration is a troublesome lens for moral reflection. It continues to depend, "for its conceptual coherence" on nationalism. It was nationalism which had demanded, "a new concept redolent of improper liaisons and denied parentage, and collaboration became nationalism's evil twin."<sup>6</sup> Brook's alternative, seen in his own study of local collaboration in occupied China is not, however, the universal collaboration with evil that Kundera describes. The sense of an "improper liaison" does not completely disappear when the term's connection to the nation-state is severed. In his careful attempts to disentangle the strands of

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a party or a foreign nation." See Jean-Paul Sartre "What is a Collaborator?" in Jean-Paul Sartre, Chris Turner trans. *The Aftermath of War (Situations III)* (Oxford: Seagull Books, 2008), 41-62.

<sup>6</sup> Timothy Brook, "Hesitating Before the Judgment of History" *Journal of Asian Studies* 71.1 (Feb, 2012), 105. Hilary Conroy, in his short essay on collaboration, in which he also argued that the term was plagued by its close orientation with the nation-state. Hilary Conroy "Thoughts on Collaboration" *Peace and Change* 1.1 (1972), 43. Brook goes beyond a critique of the term to argue for a more cautious approach to moral judgments about the past in general, offering instead a historian's imperative to produce "moral understanding" that is based upon an appreciation for the contingent outcomes of the actions of historical agents. I share with Treat a strong commitment to the moral agency of the historian and am far less troubled than Brook by the consequences of retroactive judgement in our craft. Brook wants to distinguish the work of the moralizing 'polemicist' from that of the historian but his own important study of local collaboration in occupation China goes farther than most in carefully spelling out the consequences of collaboration in the midst of mass atrocities. Nor does Brook shy away from drawing some of the obvious conclusions, as he does when he evaluates the work of the Self-Government Committee (自治委員會) in the newly Japanese occupied city of Nanjing. When the body asserted control over refugees in January, 1938 it aided a process in which males of fighting age were extracted and handed over for execution which, as Brook points out, amounted to, "complicity in war crimes." Timothy Brook. *Collaboration: Japanese Agents and Local Elites in Wartime China* (Cambridge, Mass: Harvard University Press, 2005), 144.

complicity, contingency, and unexpected outcomes in the specific cases of individuals, the unique positionality of a collaborator in an occupation setting is repeatedly emphasized. Indeed, Brook defines collaboration itself narrowly, following the Danish historian Henrik Dethlefsen, as the “continuing exercise of power” while under the coercion of an occupying force.<sup>7</sup> While avoiding any attachment of weight to national loyalty, the collaborator is described as caught in a “parasitic political engagement produced by the cancellation of sovereignty” and faced with the usually hopeless task of bridging the gap between the illegitimate occupation state and the occupied population.<sup>8</sup>

This is still something very distinct from the presumably more natural engagement between, for example the Japanese civilians employed in “pacification teams” throughout occupied China and the Japanese military with which they worked. If the *Chinese* identity of the collaborator was not relevant, their state of *occupation* was. The historian of German and Soviet occupied Poland, Jan T. Gross, also emphasizes this context, concluding that, “inasmuch as it denotes a set of relationships between the occupiers and the occupied *mediated by a set of officially existing institutions*, collaboration must be an occupier-driven phenomenon.”<sup>9</sup> For Gross, what made collaboration a unique part of a Second World War Europe host to the Holocaust was a different sort of gap: the one which opened up between the tolerable “terms of initial commitment” made by the collaborator to the occupation state, and the terrifying end result.<sup>10</sup> We might call these two similar approaches to collaboration, which endeavor to carefully sever the connection with issues of identity and betrayal in

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<sup>7</sup> Brook *Collaboration*, 2.

<sup>8</sup> Brook *Collaboration*, 222-223.

<sup>9</sup> Jan T. Gross “Themes for a Social History of War Experience and Collaboration” in István Deák, Jan T. Gross and Tody Judt ed. *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, N.J.: Princeton University Press, 2000), 24. Emphasis in the original.

<sup>10</sup> Gross “Themes for a Social History,” 29.

order to highlight the unique challenges faced by a population under foreign domination, *occupation-collaboration*.

As the gaps described by Gross and Brook suggest, emphasizing the positionality of individuals operating under foreign occupation allows the historian to focus in upon the devastating impact of international wars and the jarring spectacle of an invaded people engaging at deep disadvantage with a completely new set of powerful actors. Depending on the object of one's research, this approach can serve well, but it can also come at a cost. Hilary Conroy pointed out some of these problems long ago. He suggested, as does Treat for the Korean case, that collaboration has a very awkward place at the table in a mid-twentieth century Asia full of colonies. Even without taking the problem of identity into account, the colonial setting strains the term occupation, and leaves the discussion in "shambles." For Conroy, this problem emerges from the fact that the phenomenon of collaboration is so deeply rooted in the experiences of the Second World War, and specifically its "Nazi-European context."<sup>11</sup>

Beyond the difficulty of applying its use to colonial contexts, a problem we will revisit below, occupation-collaboration runs into difficulty when applied to earlier historical examples that long predate the rise of the modern nation-state. Despite the fact almost every piece on collaboration refers to the emergence of this term in 1940, when the French Marshal Pétain announced his collaboration with the German occupiers, any claim that the acts collaboration refer to are distinctly modern is an exercise in pure tautology. Historians of ancient Chinese and Greek history can supply many examples. And yet, attempts to explore these older cases and their moral dilemmas without serious consideration of community identity and the sense of betrayal of, for example, a group of oligarchs who open the city gates to an invading army, is to miss something absolutely central about

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<sup>11</sup> Hilary Conroy "Thoughts on Collaboration," 43.

the way the event was perceived and remembered by its contemporaries. Just as a historian acknowledges the normative principles that guide them in the formulation of their questions and the whole course of their approach, we must also recognize the gap this creates between us and the subjects we write about. We are no less bound than the moral philosopher addressed by Judith Shklar in her memorable appeal,

No theory of either justice or injustice can be complete if it does not take account of the sense of injustice. It is, indeed, one of the failings of the normal model of justice that it does not do so. It does not give injustice its due because it does not consider the sentiments that make us cry out for revenge, and if that is denied, for justice. Too complacent, it forgets the irrationality, fear, indifference and inequality which give injustice its power.<sup>12</sup>

What of the postwar period? There have been military occupations since 1945, and both Iraqi and Afghan collaborators await anxiously today to see what the future has in store for them, but it seems strangely arbitrary to limit the term collaboration to the relatively small number of foreign invasions in the second half of the twentieth century, when so many other cases seem to produce similar moral dilemmas. Is the long Communist interlude in Eastern Europe only to be incorporated into debates over collaboration because it included a Soviet military occupation? Why not speak of collaboration in the context of brutal civil wars where there is no truly foreign occupier? What of collaboration with a newly formed military dictatorship that has retained an existing bureaucracy? What of collaboration with American empire? Finally, why not include our persistent inaction in the face of social injustice?<sup>13</sup> The problem is, of course, that each broader category of cases we include brings us closer to Kundera's understanding of the collaborator as a universal archetype: the reluctant

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<sup>12</sup> Judith N. Shklar, "Giving Injustice Its Due." *The Yale Law Journal* 98.6 (April, 1989), 1151.

<sup>13</sup> To this list Kundera would add, "All those who extol the mass media din, advertising's imbecilic smile, the neglect of the natural world, indiscretion raised to the status of a virtue – they deserve to be called 'collaborators with modernity.'" Kundera *Art of the Novel*, 125.

or enthusiastic accomplice, the fellow if subordinate conspirator, the complicit bystander; the guilty and the damned.

In many of these cases we find something similar to the gap between the occupied and a state that lacks or has lost all legitimacy. We also often find a terrible contrast between the “terms of initial commitment” and the final result, even if this contrast rarely, if it ever can, rises to the scale of horror found in the Holocaust. Most importantly, in each case that includes oppression and atrocity the historian must, as in the case of military occupations, consider the complicity of actors who may themselves have directly carried out crimes, indirectly facilitated them, or whose inaction might be judged unforgivable.

Now, though, the dissipation is near complete, and the word collaboration simply becomes another word for moral complicity. If collaboration is almost everywhere, and in such a wide range of contexts, it fails to capture something distinct that a more restrictive, if arbitrary, definition of occupation-collaboration offered. It is something that is always there in occupation-collaboration, nagging the historian from behind. It is something occupation-collaboration yields not because of the virtue of its conceptual integrity but because all of the cases it does include share the very thing it sought to remove from consideration in the first place: betrayal.

This brings us full circle. When Philippe Pétain used the word “collaboration” to describe a defeated France’s new relationship with Germany, that term stood out so memorably because it was widely seen as an attempt to conceal a vile act of treason as an innocuous partnership. The Western world was witness not to the birth of a new concept but a new deceit, a new euphemism for infidelity which only gradually spread in use beyond French and English. It is true that the “conceptual coherence” of the term collaboration depended on nationalism, but it was more than that. Its ability to stand in for treason served Pétain, the resistance, and historians alike. It replaced an ancient set of

words denoting betrayal with a modern and international alternative. In the decades since the war, with nationalism in the dock and the focus shifted to an accounting of the unparalleled violence of the Second World War, the wartime traitors could be condemned again under a new indictment. Even so, it has never gained full global currency as a concept. Its equivalent words in other languages have not played a central role in the debates in many of the countries grappling with wartime crimes.<sup>14</sup> Indeed, it appears only rarely in the sources used throughout this dissertation, even when those sources were composed in English. Though the term collaboration continues to spread, in many places, the discussion remains now, as it did then, for the most part unashamedly about treason, or other nouns identifying the perpetrators of national betrayal.

In sum, collaboration obscures more than it explains. Attempts to preserve its contextuality trap the historian in a nationalist or at least identity-centric frame. Attempts to escape this frame result in a still-normatively-loaded concept that is either generalized to the point of uselessness, or arbitrarily confined to the very contexts that defined the original frame. Instead of using the framework of collaboration, this dissertation considers the relationship between the two core components that has driven so much of what has been written on the topic: betrayal and the sense of an illicit relationship on the one hand, and complicity in oppression and atrocity on the other. The outpouring of retributive violence and calls for justice in the aftermath of Japanese surrender in 1945 that are the primary consideration in this dissertation cannot be explained without considering both. Most important of all, however, a focus upon the relationship *between* the two allows us to treat post-liberation societies not merely as dramatically transformed environments—though this is not to

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<sup>14</sup> In Japanese, for example, historians use the Korean term “pro-Japanese” (親日派) when talking about collaboration in Korea, the Chinese term for traitor (漢奸) or other more neutral terms for the specific factions that worked for Japan. The more generic term for collaborators with Japan (対日協力者) is only gradually being adopted in more recent works. In Korean scholarship, various terms for traitor (민족반역자, 民族叛逆者) or pro-Japanese (친일파, 親日派) continue to be most prominent, while later collaborators are sometimes described within a general framework of fascism (파시즘).

underestimate the importance of this break, but as environments that often posed challenges similar to occupation period itself.

I have not removed the word collaborator everywhere it makes its appearance in this dissertation. It remains one convenient word among several used in the chapters that follow to distinguish a group of actors who are, at various points, accused of treason or violent crimes. If I seem cavalier in calling individuals renegades, traitors, puppets, and the like, following their accusers, it is because these characters are not the main protagonists of this story. This is the other sense in which this dissertation is not about collaboration: it is not the moral dilemmas and crimes of those who aided the Japanese occupations which are the main concern in what follows. They are of course important, but in this study of the politics of retribution, the focus is upon the judges and their relationship with the accused, not upon the accused and their relationship to the victims.

### *War Crimes and Treason*

Treasons, murders, rapines, burnings, spoils, desolations, damages and mischiefs to this nation, acted and committed in the said wars, or occasioned thereby. - *The Indictment of Charles I* (1648)<sup>15</sup>

The tribunals at Nuremberg and Tokyo were the most ambitious international effort to try the crimes of war, and the last to do so until the establishment of the International Criminal Tribunal for the Former Yugoslavia in 1993.<sup>16</sup> Building on the provisions of Hague conventions at the opening

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<sup>15</sup> From the treason indictment for the trial of King Charles I, 1648. Edward PottsCheyney, *Readings in English History Drawn from the Original Sources: Intended to Illustrate A Short History of England* (Ginn and Company, 1922), 488.

<sup>16</sup> Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (London; New York: Routledge, 2008), 8. They were not the first international tribunal however. One of three tribunals set up in Crete in 1898 appears to have that distinction. R. John Pritchard "International Humanitarian Intervention and Establishment of an International Jurisdiction Over Crimes Against Humanity: The National and International Military Trials on Crete in 1898" in John Carey, William Dunlap, and R. John Pritchard ed., *International Humanitarian Law: Origins, Challenges, Prospects* (Brill, 2006), vol. 1, 1-88. Proposals by the victorious

of the twentieth century, the influence of the Lieber Code in the American Civil War, and older traditions dating back to the Middle Ages, the early post World War II tribunals included two new categories of crimes. The first of these laid out in the 8 August, 1945 London Charter, crimes against peace, was defined as the “planning, preparation, initiation or waging of a war of aggression.”<sup>17</sup> The second, crimes against humanity, was defined as, “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds...”<sup>18</sup> In particular, the prosecution of crimes against humanity, with its focus on large scale atrocities against civilians, would go on to have a strong impact on the 1949 Geneva Conventions, the 1951 Convention on the Prevention and Punishment of the Crime of Genocide, the 1987 Convention Against Torture, as well as almost all of the national and international trials for atrocities in recent decades.<sup>19</sup>

The total number of individuals tried in the two international tribunals after the Second World War amounted to only a few dozen individuals, with the latter Tokyo-based tribunal, officially the International Military Tribunal for the Far East (IMTFE), trying 28 Japanese military and civilian leaders. The main emphasis of both trials was the prosecution of leading figures of the defeated

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powers at Paris to try war criminals after World War I failed. See James F. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (Westport, Conn: Greenwood Press, 1982). A proposed British led international tribunal to punish perpetrators of the Armenian massacres following the signing of the Treaty of Sevres in 1920 also floundered. In both cases there were weak national level trials: in the German case at Leipzig, and the earlier Constantinople court-martials for Armenian massacres under the Ottomans.

<sup>17</sup> “International Conference on Military Trials : London, 1945 Agreement and Charter, August 8, 1945” Avalon Project: Documents in Law, History and Diplomacy, Yale Law School <http://avalon.law.yale.edu/imt/jack60.asp> (Last Accessed: 3 February, 2012)

<sup>18</sup> The concept behind crimes against humanity was seen as derived from the prologue to the 1907 Hague Convention, which referred to the laws of humanity. The specific category of “crimes against humanity” was proposed in 1919 in the “Report on the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties,” following the First World War, but due to American and Japanese opposition, the proposal to prosecute such crimes was dropped. M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (Cambridge; New York: Cambridge University Press, 2011), xxvii.

<sup>19</sup> On the impact of the tribunals on postwar developments, see Futamura, *War Crimes Trials and Transitional Justice*, 32, and Bassiouni, *Crimes Against Humanity*, 34-37, 95.



powers accused of crimes against peace. Both of these international tribunals were supplemented by national-level trials or military tribunals involving thousands of suspects accused of conventional war crimes and crimes against humanity throughout Europe and Asia. In the case of the former Japanese wartime empire, these trials have become generally referred to as the “BC war crimes” trials and include American military tribunals in Manila, Yokohama, and Shanghai, as well as British, Australian, Canadian, New Zealand, Dutch, French, Russian and Chinese trials. Though the A, B, and C categories were described in some contemporary press reports as a reference to higher and lower priority suspects, the BC designation stemmed from the fact these national-run trials did not include the “crimes against peace” that were the highlight of the IMTFE, and which constituted the first of three categories of crimes consistently mentioned in various Allied documents.<sup>20</sup>

The IMTFE, and far more so the combination of the international tribunal at Nuremberg and the dozen other U.S. military trials also held there, have received the most attention of historians. This consideration is well merited given both the contemporary interest in the trials and their long-term impact on international law. The trials would leave a legacy of influence on a wide range of legal issues ranging from the nature of aggressive war, the introduction of individual responsibility into international law, and the identification of combatants. They also addressed inadequacies of

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<sup>20</sup> See Yuma Totani’s discussion of the origin of the B/C war crimes reference in Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asia Center, 2009), 23. See also Yokohama Bengoshikai 横浜弁護士会, 法定の星条旗：BC級戦犯横浜裁判の記録 [Court of the Stars and Stripes: Record of the Yokohama BC War Crimes Trial] (Tokyo: Nihon Hyōronsha, 2004), 29. In the dozen U.S. military tribunals at Nuremberg known as the “subsequent proceedings,” the indictments did sometimes include crimes against peace such as in the *Ministries* and *High Command* trials. See Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (OUP Oxford, 2011), 127. The reverse was not true, since many of the leaders prosecuted at the IMTFE, that are widely referred to as “Class A” war criminals were, in addition to crimes against peace, also indicted and convicted on charges of murder, crimes against humanity, and conventional war crimes. On the inclusion of regular murder charges, and the reaction of the judges to these counts, see Neil Boister, *The Tokyo International Military Tribunal: a Reappraisal* (Oxford; New York: Oxford University Press, 2008), 154. On statistics for how many suspects were found guilty of which counts at both Tokyo and Nuremberg, see discussion in Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (London; New York: Routledge, 2008), 65.

international law in protecting civilians from reprisals, and most of all the trials would serve as a profoundly important precedent in its response to the mass persecution—including genocide—of whole groups.

To a significantly greater extent than in the German trials, which were held in the aftermath of an unprecedented campaign of mass extermination of the Jews of Europe, in the Tokyo tribunal the men in the dock were at some considerable distance from the acts of violence presented by the many delegations at the tribunal. The considerable legal and rhetorical contortions required to assign responsibility to those in the dock not only for criminal negligence and command responsibility, but also for a planned conspiracy to commit mass atrocities and global conquest, was likewise significantly more complex.<sup>21</sup> Partly as a result of this, the trials have left a particularly troubled legacy in Japan, where they have become a popular starting point for revisionist historians and apologists for Japan's wartime empire.<sup>22</sup>

Less attention, on the other hand, has been given to the national-level trials which included many of the soldiers, military police, and others who were most directly involved in the torture, massacre, and rape associated with Japanese occupations throughout East and Southeast Asia.<sup>23</sup> If

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<sup>21</sup> On some of the problems of the selection of the accused in Tokyo as compared to Nuremberg see Futamura *War Crimes Trials and Transitional Justice*, 124-5.

<sup>22</sup> On its reception see Futamura *War Crimes Trials and Transitional Justice*, 68-86, and Totani *Tokyo War Crimes Trial*, 190-218, and 246-259.

<sup>23</sup> The most important scholarship on these trials has been done by Utsumi Aiko 内海愛子 and Hayashi Hirofumi 林博史, who have both written extensively on the national level trials and the remarkable series of documents edited by Chaen Yoshio 茶園義男 remains the most important published collection of primary materials on these trials. See for example Aiko Utsumi 内海愛子, 朝鮮人BC急戦犯の記録 [A Record of Korean Class BC War Criminals] (Tokyo: Keisō Shobō, 1982) and Hirofumi Hayashi 林博史, BC急戦犯裁判 [BC-Class War Crimes Trials] (Tokyo: Iwanami Shoten, 2005). The U.S. military tribunals that convicted generals Yamashita and Homma in the Philippines were an early topic of research due to their important contribution to doctrine of command responsibility. Philip Piccigallo's work on allied war crimes trials in Asia covered many of the national level trials but depended heavily on contemporary press accounts and the fifteen volumes of the *Law Reports of the Trials of War Criminals* selected by the United Nations War Crimes Commission. Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951* (Austin: University of Texas Press, 1979). Most recently studies of the Philippine national trials have been completed by Nagai Hitoshi and Sharon Williams Chamberlain. Hitoshi

the main international tribunals struggled to tie distant events together in a chain of responsibility and mass conspiracy, the national-level trials were faced with the many practical challenges of sorting through the evidence and managing these proceedings with limited resources in liberated areas struggling to rebuild.

Beyond these problems of evidence and procedure, both the national-level war crimes trials and the international tribunals sparked decades of discussion over the selection of the accused. These debates were not only about those who were included, but even more about those who were left out. We can broadly speak of three general kinds of absence from both the international and national trial process: 1) large numbers of enemy nationals equally or more culpable than those who were tried, 2) Allied soldiers and government leaders who were guilty of any of the three major categories of crimes against peace, war crimes, and crimes against humanity, 3) in most cases, nationals of those countries occupied during the war.

In the first instance, the trials did not simply fail to include a few missing targets, but left out the majority of the most notorious figures of Second World War. After the main international tribunal for leading figures at Nuremberg, for example, the U.S. Military tribunals established there tried only 177 of some 2,500 “major war criminals” selected by the Chief Counsel of War Crimes.<sup>24</sup> In Tokyo, the remarkable exclusion of the Japanese emperor in the trials was orchestrated through the cooperation of the Allies and the very loyal servants of the throne who faced charges in his stead.<sup>25</sup>

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Nagai 永井均, *フィリピンと対日戦犯裁判1945-1953* [The War Crimes Trials and Japan-Philippines Relations, 1945-1953] (Tōkyō: Iwanami Shoten, 2010). Sharon Williams Chamberlain, “Justice and reconciliation: Postwar Philippine trials of Japanese war criminals in history and memory” (Ph.D., District of Columbia: The George Washington University, 2010).

<sup>24</sup> Heller *Nuremberg Military Tribunals*, 370. A much larger number of minor war criminals were tried by U.S. military tribunals for a total of 1,817 war criminals, 1,085 by British tribunals, and 2,107 by the French. Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004), 54.

<sup>25</sup> On the controversy over the emperor’s place in the trial process see Totani *Tokyo War Crimes Trial*, Chapter Two.

Also protected from trial under American-supplied immunity were agents and doctors of Unit 731, which carried out medical atrocities and biological warfare.<sup>26</sup>

A second absence was that of Allied forces and their leaders. As commentators since have often pointed out, none of the international or national trials in the early postwar period included prosecutions of Allied military or civilian personnel or representatives of the many resistance forces whose very operations depended upon the violation of the laws of war.<sup>27</sup> From our perspective today, when several dozen states, including India and China, are not signatories to the International Criminal Court and several dozen others that have signed the treaty, such as the United States and Russia, have no intention of ratifying it, it does not seem terribly surprising to find that the victorious Allies of the Second World War would exempt themselves entirely from the process.

The singular evil that was the Holocaust also colors our perspective on the early postwar trials in a way that makes the absence of Allied suspects less remarkable, but it should be noted that the trials at Nuremberg considered the extermination of the Jews as only one of many crimes, and it was by no means the main focus.<sup>28</sup> At both international tribunals at Nuremberg and Tokyo, if there was a central unifying narrative, it was that of illegal aggression; to judge enemy nations who rose to power through the terrorization of their own people, pursued world conquest and, wherever they could, established occupations that ignored the laws of civilization. In Europe, article six of the London Charter of 8 August, 1945 defined its jurisdiction over the “trial and punishment of the

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<sup>26</sup> See Sheldon Harris, *Factories of Death: Japanese Biological Warfare, 1932-1945, and the American Cover-Up* (Psychology Press, 1995).

<sup>27</sup> This issue of the illegality of the guerrilla forces is revisited in chapter 5 below. For an early postwar review of this issue see Lester Nurick and Roger W. Barrett “Legality of Guerrilla Forces Under the Laws of War” *The American Journal of International Law* 40.3 (Jul 1946), 563-583. On the *tu quoque* (“you, too”) issue at Nuremberg and Tokyo see, Heller *Nuremberg Military Tribunals*, 297-8, Reinhard Merkel “The Law of the Nuremberg Trial: Valid, Dubious, Outdated” in Guenael Mettraux, ed. *Perspectives on the Nuremberg Trial* (Oxford University Press, 2008), 570-1.

<sup>28</sup> Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, (Princeton, N.J: Princeton University Press, 2000), 173-7, 191-195. Judith Shklar, *Legalism*, 170-1.

major war criminals of the European Axis countries” or those who were “acting in the interests” of the European Axis powers. Article five of the charter for the IMTFE changed this wording slightly and detached it from explicit reference to any country. It granted the tribunal “the power to try and punish Far Eastern war criminals,” suggesting either a geographic or perhaps even a racial definition for its jurisdiction. Despite this ambiguity in wording of Tokyo trials charter, however, there is little doubt who the intended targets were, Japan and the agents of its empire.

During the trials the absence of prosecutions for Allied war crimes was often used by the defense attorneys to divert guilt and point out the hypocrisy of the trials; a “you, too” or *tu quoque* defense. This was the case when attorneys for Karl Dönitz pointed out that the Allies also embraced the unrestricted submarine warfare included as a crime in the admiral’s indictment, or when other counsel for the defense pointed out the horrors of the destruction of Dresden by fire bombing when confronted with their own atrocities.<sup>29</sup> Judges pointed out the hypocrisy as well. Robert H. Jackson, the leading U.S. Prosecutor at Nuremberg, admitted in a letter to U.S. President Truman that French mistreatment of prisoners of war, Allied plunder, and the Soviet occupation of the Baltic states made the Allies guilty of some of the crimes he was prosecuting, and this included only crimes perpetrated after German surrender.<sup>30</sup> In Tokyo, the famous dissenting opinion of the Indian judge Radhabinod Pal, who found all accused Japanese suspects innocent, strongly condemned the U.S. use of atomic weapons and of the aggression represented by Western colonialism.

What these criticisms all shared was the lack of any serious proposal that Allied forces actually be tried. The most narrowly defined range of conventional war crimes went unaddressed.

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<sup>29</sup> Timothy L. H. McCormack and Gerry J. Simpson, *The Law of War Crimes: National and International Approaches* (Martinus Nijhoff Publishers, 1997), 5.

<sup>30</sup> A lengthy quote from the letter is found in Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi War Crimes Trials Changed the Course of History* (Macmillan, 2007), 60.

Given the completely unrealistic prospect of Allied governments subjecting themselves to trial over key elements of wartime policy that unambiguously constituted crimes against humanity or crimes against peace, let us for the moment exclude them. Let us exclude the strategic bombing of large urban areas, the devastating flooding caused by the Chinese Nationalist destruction of the Yellow River dikes or the U.S. atomic bombing of Hiroshima and Nagasaki. Each of these resulted in the mass murder of hundreds of thousands of civilians. Let us exclude the numerous illegal invasions by the Allies of neutral countries stretching from Iceland to the Baltics.<sup>31</sup> Let us grant the impossibility of colonialism itself joining the list of crimes prosecuted. We are still left with “conventional” war crimes committed by individual Allied soldiers or units both during the war and during the many new occupations established as the Axis powers were defeated.<sup>32</sup>

As John Dower has pointed out, there was a universal tendency in the war to see atrocities by one’s own side as episodic, while those of the enemy were “systematic and revealed a fundamentally perverse national character.”<sup>33</sup> However, the scale of rape by Soviet soldiers in areas it occupied in Europe, Manchuria, and northern Korea rose well beyond isolated acts to suggest massive criminal negligence on the part of the commanders who failed to prevent or act aggressively against it.<sup>34</sup>

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<sup>31</sup> This list should really stretch to Manchuria and Korea, since the Soviet invasions there violated the Pact of Neutrality between the Soviet Union and Japan. Though the Soviet Union signaled a desire not to renew the pact in April 1945, it should have, and Molotov gave assurances that, it would remain in effect until April, 1946. Tsuyoshi Hasegawa, *Racing the Enemy: Stalin, Truman, and the Surrender of Japan* (Cambridge, Mass: Belknap Press of Harvard University Press, 2005), 46-7.

<sup>32</sup> On the terrible impact of the breaking of breaching of the Yellow River dyke see Diana Lary “Drowned Earth: the Strategic Breaching of the Yellow River Dyke, 1938.” *War in History* 8, no. 2 (2001), 191-207.

<sup>33</sup> John W. Dower and Council of Learned Societies American, *War Without Mercy: Race and Power in the Pacific War*, (New York: Pantheon Books, 1993), 61.

<sup>34</sup> On the Soviet rapes in Germany see, Norman M. Naimark, *The Russians in Germany: a History of the Soviet Zone of Occupation, 1945-1949* (Cambridge, Mass: Belknap Press of Harvard University Press, 1995), 69-141. For the same in Hungary, see James Mark, “Remembering Rape: Divided Social Memory and the Red Army in Hungary 1944–1945,” *Past & Present* 188, no. 1 (August 1, 2005): 133–161. Very little is known about the scale of rape by U.S. forces in occupied Japan, partly due to a serious lack of documents on court martials. See Terese Svoboda “U.S. Courts-Martial in Occupation Japan: Rape, Race, and Censorship” *Asia-Pacific Journal: Japan Focus*.

Mortality rates for German and Japanese prisoners of war under Soviet control were extremely high with over a third of German prisoners and an estimated hundred thousand Japanese soldiers dying in captivity. Even the 2.58% of Germans who died in French camps was, as we saw above, recognized by some as unacceptable.<sup>35</sup> These deaths cannot be dismissed as isolated incidents. They were the result of poorly or deliberately adopted policies. Likewise, both Allied fighter pilots and their commanders must share responsibility for the widespread strafing of civilians and refugees, especially when orders were issued to shoot anything that moved.<sup>36</sup> The common mutilation of enemy corpses to collect battlefield trophies in the Pacific was certainly no torture to the living, but it was also a clearly established war crime, nonetheless.<sup>37</sup>

When it came to the punishment of the rarer cases of individual massacres carried out by Allied forces, the perpetrators could attempt to deny them completely and blame the enemy, as in the

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<http://www.japanfocus.org/-terese-svoboda/3148> (Accessed July 20, 2012). Rapes by Allied forces in mainland Europe was also on a scale far higher than the U.S. military has previously admitted to. See J. Robert Lilly, *Taken by Force: Rape and American GIs in Europe During WWII* (Palgrave Macmillan, 2007).

<sup>35</sup> See estimated mortality statistics of various prisoners tabulated in Fred Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (London; New York: Bloomsbury, 2011), 184. On Japanese casualties in the Soviet Union see Lori Watt, *When Empire Comes Home: Repatriation and Reintegration in Postwar Japan*, (Cambridge, Mass: Harvard University Asia Center: Distributed by Harvard University Press, 2009), 126-7.

<sup>36</sup> William Colgan writes that orders were given to him in the units he flew in to avoid “gunning down” or “going after” civilians, but admits that it was “hard” to keep them separate. William B. Colgan, *Allied Strafing in World War II: A Cockpit View of Air to Ground Battle* (New York: McFarland, 2010), 186. Chuck Yeager claims in his autobiography that he received orders in a 1944 mission to demoralize the population by strafing anything that moved. Chuck Yeager and Leo Janos, *Yeager, an Autobiography* (New York: Bantam Books, 1986), 62-63. Quoted, with further discussion in James J. Weingartner, *Americans, Germans, and War Crimes Justice: Law, Memory, and “The Good War”* (ABC-CLIO, 2011), 11. The most damning evidence of how casually strafing of civilians was taken, see Weingartner’s discussion of the wartime documentary *Thunderbolt*, prepared by the U.S. war department, where we are given actual footage of U.S. war crimes in action in Italy. For more evidence and the impact of strafing of civilians from the perspective of Italians, see James Holland, *Italy’s Sorrow: A Year of War, 1944-1945* (New York: Macmillan, 2008), 392. The discovery of a Korean War memorandum “Policy on Strafing Civilians” during investigations into the massacre at No Gun Ri which noted that the Air Force had complied with Army requests to date for the strafing of civilians shows that this policy continued, at least in some cases, into the postwar. The U.S. military’s own review report admits to the existence of the memorandum but overall denies that there was any explicit order to strafe civilians. See Department of the Army Inspector General *No Gun Ri Review* (Jan, 2001), 98-100.

<sup>37</sup> Dower *War Without Mercy*, 64-5. The protection of the dead from pillage and ill-harm was established in the 1907 Hague conventions. This can be found in Hague Convention (X), Article 16 from 1907.

infamous case of the execution in Katyn forest of thousands of Polish officers, police, and intellectuals. Alternatively, the Allies could argue that the regular processes of military justice were more than fair enough to try forces guilty of the crimes of war. Unlike Japanese and German court-martials, or the almost non-existent investigative efforts of the Wehrmacht War Crimes Bureau, many individual Allied atrocities resulted in some kind of punitive response. For example, the first British war crimes trial held in Singapore of Japanese soldiers accused of abusing Indian POWs took place at the same time as two British soldiers were being court-martialed in Malaya for abusing Japanese POWs.<sup>38</sup> There are also the more famous cases of the Biscari massacre by U.S. soldiers of several dozen Italian POWs in 1943, and the rapes and killings committed by French-Moroccan colonial troops after the fall of Monte Cassino in 1944. Both least resulted in arrests.<sup>39</sup> However, the troubled outcomes in these latter cases, one ending in a shameful whitewash and the other in arbitrary and unjust summary executions, suggest some of the broader problems of letting militaries judge their own atrocities in the field.<sup>40</sup> Ultimately, civilians and prisoners of war of the defeated Axis, and indeed the subjects of any of the new postwar occupations had very little recourse for justice.

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<sup>38</sup> Colin Sleeman, ed., *Trial of Gozawa Sadaichi and Nine Others* (William Hodge, 1948), lxviii.

<sup>39</sup> On the Wehrmacht War Crimes Bureau's own investigations of German atrocities, see Alfred M. De Zayas, *The Wehrmacht War Crimes Bureau, 1939-1945* (Lincoln: University of Nebraska Press, 1989), 109-120. On the Biscari massacre and its acquittal of the American soldiers who carried it out, see James J. Weingartner "Massacre at Biscari: Patton and an American War Crime" *Historian* 52 no. 1 (Nov., 1989), 24-39. On the execution, sometimes without trial of the Moroccan Goums accused of atrocities after the battle of Monte Cassino, see Edward L. Bimberg, *The Moroccan Goums: Tribal Warriors in a Modern War*, (Westport, Conn: Greenwood Press, 1999), 63-64. Bimberg quotes around 15 executed, and another 54 sentenced in court-martials for rape, pillage, and murder.

<sup>40</sup> In the case of Biscari, most of the accused escaped punishment while the case of the Goums included summary executions and lack of command responsibility for ensuring the discipline of troops, not to mention the complicating factor of race. I have found very little study that has been done on the scope and nature of Chinese or Soviet military justice for atrocities during the war.



It is the third group of individuals absent from the war crimes proceedings that is the focus of this dissertation: those who committed atrocities as allies of the defeated enemy nations, but who were not among its citizens. They were ones who were despised both for their betrayal and for their brutality. Many of them did face retribution in the aftermath of war but none of them came before the international tribunals. Only a small number came before the national-level war crimes trials after the war. Instead, the vast majority of those guilty of, or complicit in atrocities of wartime occupations were tried in special or regular courts operating under newly passed laws for treason or related crimes of collaboration. In these trials, the crime of treason rarely stood by itself. To it were frequently added other charges such as murder, torture, or other ‘mischief to the nation,’ but rarely was there any doubt what their original sin was.

There were some exceptions. In the Soviet Union, areas under Soviet occupation, or where the Communist party was strong, there were wartime collaborators tried as war criminals. In some cases, these trials or purges made little distinction between the name of the crime and its content, while elsewhere they led to some of the only examples of war crimes prosecutions of local nationals after the Second World War. Before the full Communist takeover, the People’s Courts of Hungary tried thousands of Hungarians for war crimes and crimes against humanity, even if the same individuals were also referred to as traitors on other occasions. Its judges offered a rare clarification for why its defendants were not tried under other national laws. The defendants, “charged with war crimes, and crimes against the people, attacked and endangered not only the constitution and political system of their own country but international law and the peace of civilized humanity as well.”<sup>41</sup>

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<sup>41</sup> Translated and quoted in Lázló Karsai “The People’s Courts and Revolutionary Justice in Hungary, 1945-6” in István Deák, Jan Tomasz Gross, and Tony Judt, eds., *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, N.J: Princeton University Press, 2000), 237.

In Finland, which was under heavy Soviet pressure to carry out a purge after its wartime alliance with Germany, there was a remarkable series of domestic war crimes trials involving over 3,000 cases of Finnish nationals charged with atrocities, though these trials are all but forgotten in comparison with the better known prosecution of Finnish wartime leaders for the unusual crime of “having responsibility for the war.”<sup>42</sup> In Czechoslovakia, a June 1945 “Great Decree” that set up 24 People’s Courts clearly separated a category of treasonous “crimes against the state” from the separate categories of crimes against persons and property. A legal infrastructure was therefore at least in place for the isolation of atrocities from the political crime of treason.<sup>43</sup> In Yugoslavia, in addition to tens of thousands of military collaborators summarily executed by partisans at the end of the war, military court-martials tried a number of notorious figures of the Croatian Ustaša movement as war criminals rather than traitors.<sup>44</sup>

In some cases, any attempt to categorize the crimes tried is futile. In Bulgaria, following the army and Fatherland Front coup of September, 1944, the main thrust of retribution was on a sweep of ‘fascist’ elements. The Front’s purge sought to “eradicate fascist obscurantism, the racial hatred, and the humiliation of the national honour of our people,” and the extensive purges that followed made little attempt to distinguish crimes of national betrayal, political heresy, or wartime atrocities.<sup>45</sup> In Romania, the early postwar purge also made few clear distinctions, variously designating its

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<sup>42</sup> Tom Moring, “Finland at the Cross-Roads: How Finland Avoided Being Engulfed into the Communist Block” in Stein Ugelvik Larsen ed. *Modern Europe after Fascism, 1943-1980s* (New York: Columbia University Press, 1998), vol. 2, 1079.

<sup>43</sup> Benjamin Frommer, *National Cleansing: Retribution Against Nazi Collaborators in Postwar Czechoslovakia* (New York: Cambridge University Press, 2005), 350. A separate National Court that was set up used the crimes defined by the ‘Great Decree’ but added to it acts “unbecoming to loyal and brave Czechoslovak citizens.” See page 365.

<sup>44</sup> Jozo Tomasevich, *War and Revolution in Yugoslavia, 1941-1945* (Stanford, Calif: Stanford University Press, 2001) 621note 18, 751 note 1.

<sup>45</sup> Nikolai Poppetrov, “Defascification in Bulgaria from 1944 to 1948: Real Dimensions and the Functions of Propaganda” in Stein Ugelvik Larsen ed. *Modern Europe after Fascism, 1943-1980s*, vol. 1, 778.

targets, including the wartime dictator Ion Antonescu, as fascists, nationalists, anti-Semites, traitors, exploiters, or war criminals.<sup>46</sup> When the Communist party took full control in Hungary and Czechoslovakia, trials there also increasingly adopted the full lexicon of Soviet purges to try its enemies of the state.

Another exception, found often in the European context, came from individuals living in one of the occupied nations, but of German citizenship, or ethnic origin. There were a number of ethnic Germans or half-Germans born or raised in prewar countries such as Russia, England, Argentina, Romania, Brazil, and Poland who were tried for war crimes in the U.S. military tribunals at Nuremberg.<sup>47</sup> Similar cases can be found in other national-level war crimes trials around Europe with varying outcomes. Some were tried as enemy war criminals, others as traitors. In Denmark, nearly a quarter of the entire German minority in the southern Schleswig region was convicted of treason.<sup>48</sup> Austria, which had the difficult task of reinventing itself as a victim of foreign invasion despite widespread enthusiasm for its annexation by Germany in 1938, did not go so far as to punish its atrocities as crimes of national betrayal. It convicted over 13,000 of war crimes in unusually long-lasting special courts from 1945 until the end of the Allied occupation in 1955.<sup>49</sup> In Norway, a number of German-born interpreters and police officers who fell under the jurisdiction of the Norwegian treason law due to long residency in the country faced an unusual fate. Tried and convicted as traitors, those not executed were deported from Norway at the conclusion of their

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<sup>46</sup> Krista and Cornelius R. Zach, "Romanian Fascism and Communist Take-over: Elements of Continuity?" in Stein Ugelvik Larsen ed. *Modern Europe after Fascism, 1943-1980s*, vol. 1 816-820.

<sup>47</sup> Some of these include Waldemar Klingelhöfer, Ernst Wilhelm Bohle, Richard Walther Darré, Anton Lechner, Eduard Lorenz, Victor Capesius, and Klaus Dylewski.

<sup>48</sup> Ditlev Tamm "Phases of Co-operation, Shades of Guilt: Coping with the Tangled Web of Collaboration in Post-war Denmark" in Stein Ugelvik Larsen ed. *Modern Europe after Fascism, 1943-1980s*, vol. 2, 1467, 1479-80.

<sup>49</sup> Punishment was under an act punishing "War criminals and other National Socialist misdeeds." Timothy L. H. McCormack and Gerry J. Simpson, *The Law of War Crimes: National and International Approaches* (Martinus Nijhoff Publishers, 1997), 77-78.

sentence, along with all other convicted German war criminals. These men, who often had no ties to the land they were ‘returned’ to, were then added to the official Norwegian statistics for war criminals.<sup>50</sup>

Elsewhere, the German origin of prisoners became a point of contestation at trial. During the trial of Waffen-SS soldiers who carried out the murder of prisoners of war known as the Malmedy Massacre, all the defendants were convicted except one, the Alsace-born Marcel Boltz. Recruited after the annexation of Alsace by Germany, the newly recovered French citizenship of Boltz in 1945 secured him an acquittal following an appeal of the French government through the U.S. State Department.<sup>51</sup> We will have occasion to touch upon a few similarly complex cases in the Philippines and China in the chapters below.

The final important exception is the case of the military auxiliaries and colonial soldiers of Japan. While both Koreans and a few Taiwanese would face treason trials after the war, in Chinese, Dutch, Australian, British, and American courts they were charged with war crimes. Although Allies often segregated these colonial prisoners from the Japanese, and Korea’s independence had been promised “in due course” at the Cairo Conference in 1943, in the trials they were treated as enemy subjects. As one British diplomat wrote of the difficult to categorize prisoners in December, 1945, “The onus is clearly on the Korean and Formosan concerned to prove to our satisfaction that he is not, in fact, a Japanese in sheep’s clothing. We believe there is evidence, for instance, to show that Koreans, in particular, have been amongst the most brutal and cruel of the guards set over our

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<sup>50</sup> Berit Nøkleby, *Krigsforbrytelser: Brudd På Krigens Lov i Norge 1940-45* (Oslo: Pax forlag, 2004), 71-74.

<sup>51</sup> James J. Weingartner, *A Peculiar Crusade: Willis M. Everett and the Malmedy Massacre* (New York: New York University Press, 2000), 103.

prisoners in the Southern regions and we must be in a position to treat such persons as Japanese war criminals.”<sup>52</sup>

Eventually 148 Korean and 173 Taiwanese conscripted auxiliaries and volunteer soldiers were convicted of war crimes, many of them for crimes of torture, murder and abuse while serving as guards in the prisoner of war camps.<sup>53</sup> Those that were not executed faced ostracization after release without gaining any of the veterans benefits other Japanese war criminals would receive after their release.<sup>54</sup> Sympathizers have pointed out the “double pain” of conscription and conviction as war criminals that the Korean and Taiwanese faced, but increasingly the emphasis on the injustices of their postwar fate has drawn attention away from the wartime brutality many of them undoubtedly perpetrated.<sup>55</sup> The torturer has become a victim. This is nowhere better seen than in the example of a 2006 Korean truth commission composed of scholars and government officials which pronounced all convicted Korean war criminals innocent.<sup>56</sup>

In most cases after the Second World War, including all of the areas under Japanese control, citizens who had served in enemy police or military units, or were otherwise accused of complicity in atrocities, faced legal retribution through special courts or military court-martials for treason.<sup>57</sup> In

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<sup>52</sup>Yun Yŏk-ik 윤역익, eds., *한영 외교사 관계 자료집* [Korean-English Diplomatic Historical Document Collection], vol. 32 (Seoul: Tonggwang Ch’ulp’ansa, n.d.) vol. 32, 26.

<sup>53</sup> Hayashi Hirofumi *BC kyū senpan saiban* (BC Class War Crimes Trials) (Tokyo: Iwanami, 2005), 153.

<sup>54</sup> See Utsumi Aiko, *Chōsenjin BC Kyū Senpan no Kiroku* (A Record of Korean Class BC War Criminals), Keisō Shobō, 1982.

<sup>55</sup> See for example the collection of articles introduced by Utsumi Aiko, “Lee Hak Rae, the Korean Connection and “Japanese” War Crimes on the Burma-Thai Railway” *The Asia-Pacific Journal: Japan Focus* [http://www.japanfocus.org/-Gil-Heong\\_yun/2505](http://www.japanfocus.org/-Gil-Heong_yun/2505)

<sup>56</sup> For a discussion on this see Sayaka Chatani “Korean War Criminals in the Movement to ‘Set History Straight’” <http://www.froginawell.net/korea/2008/03/korean-war-criminals-in-the-movement-to-%E2%80%9Cset-history-straight%E2%80%9D/> (Accessed July 2, 2012).

<sup>57</sup> Trial statistics rarely made it clear how many of those prosecuted, with the occasional exception of informers, were additionally accused of being complicit in occupation atrocities, either in their own countries, or on distant

Belgium, military and guards who “took up arms against the Belgian State” constituted the most serious among four categories of collaboration in a December, 1942 decree, and there was to be no distinction between higher and lower officers. Some 31,821 Belgians were convicted of some form of “military collaboration,” which made up more than half the convictions in the military tribunals established.<sup>58</sup> In Denmark too, 9,500 convicted military, police and security force collaborators composed the majority of the roughly 13,500 convicted of treason, but in regular criminal courts.<sup>59</sup> In the Netherlands, cases for wartime crimes were funneled through six Special Courts for treason and collaboration. The most frequent convictions in the courts were for volunteer military and police collaborators, whose guilt was established in some cases by simple identification of them in uniform. Regular Dutch police, however, who helped achieve the highest roundup rates Jews in Western Europe, were exempt from the trials as long as they refused membership in the Dutch National Socialist movement.<sup>60</sup>

A similar pattern for military and police collaborators is found in Norway. Over 5,000 Norwegians who fought in various German military or Waffen-SS units were automatically guilty of treason according to Norwegian law by virtue of membership in a treasonous organization. Some 4,272 were convicted under a separate charge for giving “aid to the enemy” and imprisoned or given

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fronts. A lack of consistent patterns in the severity of sentencing in most countries also make it difficult to easily classify cases which involved accusations of atrocity as well as treason.

<sup>58</sup> Peter Elslander and Mark Van Den Wijngaert “Dishonourable Conduct in a Divided State: Settling Accounts with the Collaborators in Belgium” in Stein Ugelvik Larsen ed. *Modern Europe after Fascism, 1943-1980s*, vol. 2, 1325-37. See also Martin Conway “Justice in Postwar Belgium: Popular Passions and Political Realities” Deák ed. *Politics of Retribution in Europe*, 133-156.

<sup>59</sup> Ditlev Tamm “Phases of Co-operation,” 1467.

<sup>60</sup> Jan Bank, “Post-war Politics and the Legacy of Nazism in the Netherlands” in Stein Ugelvik Larsen ed. *Modern Europe after Fascism, 1943-1980s*, vol. 2, 1396-1407.

terms of forced labor.<sup>61</sup> Special state police who were crucial in helping Germany exterminate almost half of Norway's Jews were also convicted for treason, but the judges were primarily interested in their betrayal of the nation and sympathy for fascism, paying far less attention to the horrible outcome of their collaboration.<sup>62</sup> In both Norway and Denmark, these treason trials were held in regular courts with the benefit of wartime legislation to buttress prewar treason laws.<sup>63</sup>

In France too, atrocities were punished within a process of retribution against treason. Gestapo agents and militia (*Milice*) members who escaped summary execution upon capture were charged with additional crimes of murder and torture, but within the *cours de justice* established by a June 1944 ordinance to punish acts of collaboration. These courts handed out execution sentences for betrayal alone as well as of betrayal combined with acts of violence.<sup>64</sup> Tried under a single judge and four lay jurors who were representatives of the resistance, all convictions of these early postwar *cours*

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<sup>61</sup> Eirik Brazier "Tjeneste for fienden med våpen i hånd" in Hans Fredrik Dahl and Øystein Sørensen *Et Rettferdig Oppgjør? Rettsoppgjøret i Norge etter 1945* (Oslo: Pax Forlag, 2004), 120. See also Arvid Bryne, *Vi Sloss for Norge: Frontkjemper Og Motstandsmann: Fiender i Krig, Venner i Fred* (Oslo: Cappelen, 2007).

<sup>62</sup> Per Ole Johansen "Rettsoppgjøret Med Statspolitiet" in Per Ole Johansen ed. *På Siden av Rettsoppgjøret* (Oslo: Unipub, 2006), 48-9.

<sup>63</sup> See discussion of the comparison between the two in Ditlev Tamm "Phases of Co-operation," 1468-70. The Danish question was complicated by at least two factors. One was a debate over in what sense Denmark was, like other countries considered at war with a country which completed its occupation of the country in less than a day. The second was whether acts of collaboration before 1943, when the minimal German interference in Danish affairs began to change radically, were to be included as collaboration.

<sup>64</sup> As with many wanted German war criminals who escaped with the help of Catholic networks, many *miliciens* sought refuge in French and Canadian monasteries. John Hellman, "Monasteries, Miliciens, War Criminals: Vichy France/Quebec, 1940-50," *Journal of Contemporary History* 32, no. 4 (October 1, 1997). As for the wartime conduct and the early postwar fate of regular French police who served during the occupation is a complex one with significant regional variation. In Marseille, at least, a purge of the police was carried out relatively early. See Simon Kitson, "The Police in the Liberation of Paris" in H.R. Kedward and Nancy Wood eds. *The Liberation of France, Image and Event* (Oxford ; New York: Oxford University Press, 1995). Simon Kitson, "From Enthusiasm to Disenchantment: The French Police and the Vichy Regime, 1940-1944," *Contemporary European History* 11, no. 03 (July 31, 2002) and Simon Kitson, "Rehabilitation and Frustration: The Experience of Marseille Police Officers After the Liberation," *Journal of Contemporary History* 33, no. 4 (October 1, 1998).

*de justice* included the crime of “national indignity.”<sup>65</sup> In Greece too, trials were held under a constitutional act providing “Sanctions On Those Who Have Collaborated with the Enemy,” with the accused being divided into three groups according to which enemy the nation had been betrayed to: Bulgaria, Germany, or Italy.<sup>66</sup> As the country plunged into civil war, proceedings against wartime traitors were quickly surpassed in scale by a treason of a different sort—that of Communists and their suspected sympathizers.<sup>67</sup> In a move that would be recognizable to critics of the U.S. occupation in southern Korea, the British Army actively protected and helped rehabilitate Greek police and army units who had served under the occupiers.<sup>68</sup>

In most countries across Europe military and police forces that worked with wartime occupations came in closest contact with their violence and repression. Every day they faced a choice of whether to participate in that violence, facilitate it, ignore it, or suffer the consequences of a bolder alternative. These were moral choices they faced, just as German soldiers and Gestapo officers faced them. However, in the aftermath of war military and police collaborators were judged not solely upon whether they committed torture or facilitated massacre. They were judged on whether they arrested insurgents *for* the occupier; whether they committed torture *on behalf* of the Germans; and whether they facilitated massacres *by* the enemy. Their crimes almost never stood alone and were linked closely to their betrayal. In the territories that emerged from the grip of Japan’s wartime empire that are the focus in this dissertation, we find a similar pattern in the response of postwar regimes, even

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<sup>65</sup> Peter Novick, *The Resistance Versus Vichy: The Purge of Collaborators in Liberated France* (London: Chatto & Windus, 1968), 151-154.

<sup>66</sup> Eleni Haidia “The Punishment of Collaborators in Northern Greece, 1945-1946” in *After the War Was over: Reconstructing the Family, Nation, and State in Greece, 1943-1960*, (Princeton, N.J: Princeton University Press, 2000), 43-48.

<sup>67</sup> Mark Mazower, “The Cold War and the Appropriation of Memory: Greece after Liberation” in Deák et al. *Politics of Retribution in Europe*, 212-232. A similar observation might be made of China in the same period.

<sup>68</sup> Andre Gerolymatos, *Red Acropolis, Black Terror: The Greek Civil War And The Origins Of The Soviet-american Rivalry, 1943-1949* (Basic Books, 2004), 97.



when it was a returning empire. The atrocities committed by nationals of the occupied territories almost always became deeply intertwined with the efforts to punish betrayal of the nation.<sup>69</sup> This was seen as perfectly natural to the various parties involved in the process in 1945. Indeed, it may continue to seem perfectly natural, partly because of the persistence of the broader concept of collaboration, and behind it nationalism, as the primary lens through which to consider their acts. Each of the following chapters examines some of the consequences of taking this approach in wartime and during the early postwar period.

Beyond the immediate costs, however, was a longer legacy. Whatever their faults, war crimes trials sent a clear message that certain forms of conduct were no longer tolerable and lacked all legitimacy. Neither the Allies with their bloody hands, or those who pointed out their hypocrisy at the time fundamentally opposed the basic principles established. If atrocities, tortures, and though less common, outright invasions continued to be prominent features of the second half of the century, they did so in the shadow of a powerful international human rights discourse that would come to full maturity in the 1980s. One of the tragedies of retribution in the name of treason after Japan's defeat in Asia, as well as in Europe, was that this declaration of the fundamental illegitimacy of torture, summary execution, and mass atrocity was not *amplified* in the domestic setting where the nationals of each country were tried. Insofar as the primary crime was that of betrayal, it was that much easier to come away from the war, as some surely did, with the view that resistance forces, or postwar successor states continued to be bound by a simpler logic within the realm of civil conflict. Our torture is justifiable, our prisoners do not deserve protection, and our liquidations are necessary—if only the nation is saved.

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<sup>69</sup> The only exception I have found is in a few cases in which torture of wartime police in Malaya was punished under lesser charges of “causing hurt.” See Chapter Three below.

## **Part I: Renegade Politics and Retribution in the British Empire**

Part One of the dissertation looks at the “renegades” of the British Empire who fought together with the Japanese. It examines the evolving efforts to punish mostly military collaborators in India and Burma, and the impact of policy established in India upon the broader retributive process in Southeast Asia after the war. In all of these cases, the people of the invaded territories emerged at the end of the conflict not as a people free and self-determined, but instead were turned over once again to their old imperial ruler, Britain. As we shall see, this impacted both the wartime choices of nationalist leaders from each of Britain’s colonies, as well as the postwar response of the returning empire.

The claims that treason charges in this complex environment was unjust was not unique to margins of empire. The European attempts to punish military and police collaborators through the laws of national betrayal that we saw in the previous chapter occasionally had to deal with treason suspects who could protest they owed no allegiance to the country they were accused of betraying. Accused traitors of German origin could make this claim. Minorities in the Soviet Union such as the Cossacks and Ukrainians could make this claim, as did ethnic Bulgarians in Greece, Croatians in Yugoslavia, the Flemish in Belgium, and many others. Britain’s most famous wartime traitor, the radio broadcaster for the Nazis, William Joyce, pleaded that he may have been Irish or American but was never a British citizen, and thus owed no loyalty to the King. It did not save him from the gallows.

However, in India and Burma, the returning British did not face the pleas of a few marginal figures, or minority group traitors who could do little to threaten the state. It faced powerful and growing nationalist sentiment at the same time as its control over territories had weakened to the point of breaking. In India and Burma, the British attempted to limit trials of collaborators only to

those who were both traitors and guilty of other violent crimes. In both cases, they failed to achieve the political aims of the process as well as any meaningful reckoning with wartime atrocities.

In India the vast reduction in the number of cases considered did not prevent early postwar trials from becoming a powerful nationalist issue to rally behind. In Burma the British learned from the lessons of India. It abandoned virtually all attempts to try military collaborators guilty of atrocities but offered nothing in its place to address the bitterness of wartime violence that often bore a complex ethnic character. The attempt to link treason to brutality in India, Burma, and throughout the British empire offered no model as an alternative means to punish wartime atrocities by Japan's allies. In India, the British produced no convictions of INA suspects who were guilty of the crimes against civilians that could serve as helpful precedents in cases elsewhere in Southeast Asia. Instead, with the exception of some violence against Indian POWs that had not joined the INA, their crimes were usually carried out in the name of internal military discipline and, in some cases, would not even have constituted offenses if they had been carried out under British orders. In Burma, where the British had evidence of atrocities by the former Burma Independence Army, including their leader Aung San, the decision to save the latter crippled any efforts to continue with prosecutions. Even had this case not imploded the effort, from the start the entire approach to the process was marred by a fatal distortion: by using the issue of atrocities as a means to legitimize limited retribution against those who were disloyal, the search became one for traitors who were also incidentally guilty of atrocities, with all the domestic political ramifications such an effort bore, rather than as a more general independent process which aimed to find war criminals as such.

While debates over the policies towards collaborators continued, war crimes trials for Japanese soldiers were being carried out in over half a dozen locations in the empire: British judges convicted over nine hundred Japanese in over three hundred war crimes trials throughout Southeast

Asia, including 40 trials in Burma.<sup>1</sup> These trials were by no means without their flaws, and, as Utsumi Aiko has argued, the treatment of Taiwanese and Koreans on the same level with Japanese soldiers in war crimes trials elsewhere showed that the universal nature of the crime did not always sit comfortably with the contextual circumstances of the perpetrator.<sup>2</sup> This problem and the scale of the trials would have been considerably amplified if they had included all military collaborators and informers of the Japanese in occupied areas. However, whatever the challenges any alternative might have faced, the choices made in these British imperial cases tied illegitimate violence in each area to the expediency of politics in an imperial endgame.

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<sup>1</sup> See Hayashi Hirofumi "British War Crimes Trials of Japanese" *Nature-People-Society: Science and the Humanities*, 31 (July 2001).

<sup>2</sup> Utsumi Aiko has published several works on the fate of these B and C category war criminals. See for example Aiko Utsumi 内海愛子, 朝鮮人BC急戦犯の記録 [A Record of Korean Class BC War Criminals] (Tokyo: Keisō Shobō, 1982).

## Chapter 2: Indian Renegades from Patients to Prisoners, 1943-1946

In late 1945 and early 1946 seven men were court-martialed in Delhi and charged with “waging war against the King.”<sup>1</sup> They had betrayed the Indian Army they once served to fight in a Japanese offensive that cost the Allies tens of thousands of lives on the battlefields of western Burma and within the borders of India itself. These officers were the unlucky few, chosen from a much larger list of members of the Indian National Army (INA) that had violated their sworn allegiance to the British Empire. To supporters of the trials, their conviction was crucial, as only then, “the principle that treason cannot be condoned will have been vindicated.”<sup>2</sup>

For Indians following the progress of the trials around the country, these men were convicted for having chosen the cause of Indian independence over their military oath. The men charged were defended in court by the leading legal minds of the Indian Congress party and the Muslim League. Behind them stood the entire nationalist press of the colony. Their trials gave birth to a new class of heroes, helped spark a dangerous naval mutiny, and on more than one occasion were a primary cause of riots that resulted in dozens of deaths. Though the prosecutions all reached guilty verdicts, they were an embarrassing failure for the colonial administration. None of those convicted would remain in prison after India and Pakistan gained independence the following year. And yet, these particular men were chosen because, in addition to their treason, they could also be charged with murder,

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<sup>1</sup> There are seven men whose cases are frequently referred to, the first three of which are most often the subject of the “Red Fort Trials.” Fay claims to have found mention of some ten total cases before a communique in May, 1946 brought them to an end. However, the treason charge was likely dropped in these later cases after a consensus on this was reached to eliminate the treason charge in February. Peter Ward Fay, *The Forgotten Army: India’s Armed Struggle for Independence 1942-1945* (University of Michigan Press, 1995), 496.

<sup>2</sup> “Auchinleck to Wavell” (24 Nov., 1945) Office Records India and Office Library India, *The Transfer of Power 1942-7* (London: H.M.S.O, 1970) vol. 6, 233. Hereafter TOP.

abetment to murder, and the beating of one of their own number. What began as treason trials, ended as trials of men charged with acts of illegitimate violence.

The story of the formation and exploits of the Indian National Army has been told many times.<sup>3</sup> The first three prosecutions in the Red Fort trials, as the trials of the INA came to be known, have been carefully studied and the various courtroom arguments analyzed.<sup>4</sup> Equally well studied is the role of these trials in instigating unrest in Calcutta and elsewhere, and especially their impact on the mutiny of the Royal Indian Navy in February, 1946.<sup>5</sup> However, the soldiers and civilians in the Indian National Army were only the most famous representatives of a broader category of “Indian renegades.” Numbering in the thousands and found across the world, these troublesome subjects plied their rebellious trade abroad and many of them fought or labored for the empire’s Axis enemies. They were also sometimes involved in acts of brutality that went far beyond any crime that could be attributed to the INA on the battlefields of Burma.

This chapter argues that the approach taken by the British Empire towards the Indian National Army after Japanese surrender was key to the fate of almost all “Indian renegades” after the war. Before they were prisoners, most captured INA were treated as patients. When the treachery of

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<sup>3</sup> Those works which focus on the INA as a whole, rather than through the lens of such figures such as Subhas Chandra Bose, include Peter Ward Fay, *The Forgotten Army: India’s Armed Struggle for Independence 1942-1945* (Ann Arbor, MI: University of Michigan Press, 1995). Tilak Raj Sareen, *Japan and the Indian National Army*, 1st ed. (New Delhi: Mouno Pub. House, 1996). Joyce C Lebra, *The Indian National Army and Japan* (Singapore: Institute of Southeast Asian Studies, 2008).

Gurbachan Singh Mangat Mangat, *Indian National Army, Role in India’s Struggle for Freedom* (Ludhiana: New Delhi: Gagan Publishers; Distributed by Classical Pub. Co, 1991). Kalyan Kumar Ghosh, *The Indian National Army; Second Front of the Indian Independence Movement* (Meerut: Meenakshi Prakashan, 1969).

<sup>4</sup> India (Dominion) *Two Historic Trials in Red Fort; an Authentic Account of the Trial by a General Court Martial of Captain Shah Nawaz Khan, Captain P. K. Sahgal and Lt. G. S. Dhillon; and the Trial by a European Military Commission of Emperor Bahadur Shah* (New Delhi: Moti Ram, 1946). Harkirat Singh, *The INA Trial and the Raj* (Atlantic Publishers & Distributors, 2003). Maybritt Jill Alpes, “The Congress and the INA Trials, 1945–50 A Contest over the Perception of ‘Nationalist’ Politics,” *Studies in History* 23, no. 1 (February 1, 2007), 135–158. L. C. Green, “The Indian National Army Trials,” *The Modern Law Review* 11, no. 1 (1948): 47–69.

<sup>5</sup> The most discussion of the impact is found in Biswanath Bose, *RIN mutiny, 1946: Reference and Guide for All* (New Delhi: Northern Book Centre, 1988).

Britain's colonial subjects most threatened the empire's wartime efforts, these men were treated as casualties affected by a temporary affliction. They could be restored to health with rest and an injection of patriotism. Only as Japanese defeat loomed was this lenient approach reversed and mass trials for treason proposed. When the number of those slated for trial were ultimately reduced to a small number of individuals also accused of wartime atrocities, it was still the charge of treason which hung over the entire proceedings. As the following chapter continues the argument, these developments in British Indian policy would also have an impact on other early postwar trials across British Asia.

This dissertation opens with the story of British policy towards its "Indian renegades" because, despite some of its unique characteristics, it offers examples of all of the patterns that will become familiar in postwar retribution in other sites considered: 1) a separation of military collaborators from other accused traitors 2) a large scale attempt to reform military collaborators accused of treason 3) an ambitious plan to try wartime collaborators for treason that has its scope rapidly narrowed in the face of insurmountable political challenges 4) and a troubled attempt to prosecute crimes of brutality through the laws of treason at the same time Japanese soldiers are being tried for very similar crimes under an entirely different legal regime.

The trials of the Indian National Army deserve to be remembered, as they are, as a moment of failure for the British empire and a signal of its decline. However, the accusations of treason in a colonial setting that appear so unjust to us today were not contested by British imperial officials of the time as inappropriate. If there was internal opposition to the prosecution of Indian independence activists who joined Britain's wartime enemies, it was almost always a question of prudence. The crimes of violence that some INA officers were accused of, and other Indians who worked with the Japanese empire were guilty of are now easier for us to consider in isolation from the tense politics of



decolonization of the time. At the time, however, accusations of murder and torture prosecuted in the small number of British trials of Indians after the war were not of the sort to elicit any significant indignation of the people of India. As we shall see, they rarely bore resemblance to the horror or scale of atrocities being reported from the various fronts of the war. Instead, the confused progress of the most high profile cases set an exceedingly poor example for officials to follow elsewhere in the British Empire.

*The Indian National Army and Foreign Volunteers in World War II*

In 1944, when the initiative in the war had already seemed to shift decisively to the Allies, a newly reorganized Japanese Burma Area Army launched a final and ultimately disastrous attempt to extend its control into India and cut off Allied supplies: the Imphal campaign. It was a daring and desperate military offensive which ignored the complete inability of the Imperial Army to provide sufficient logistical or air support. Over 220,000 Japanese troops were involved in its two component advances in Arakan and across the frontier into India. With them, the Japanese command reluctantly deployed around 10,000 troops of an Indian National Army (INA) that took arms against colonial rule as well as against tens of thousands of “loyal” Indians fighting under the British imperial flag.<sup>6</sup>

Deployed in flank guard positions, in quiet support sectors, and for use in small-scale raids, to many Japanese commanders INA participation in the military campaign was a sideshow. The frontline troops were a ragtag collection of mostly British trained soldiers who could not move with the speed or fight with the effectiveness of the Japanese. Some INA units fought reasonably well, but it was hard to expect much from soldiers who had very little equipment, limited logistics, and poor

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<sup>6</sup> Joyce C Lebra, *The Indian National Army and Japan* (Singapore: Institute of Southeast Asian Studies, 2008), 190. Chandar S Sundaram “A Paper Tiger: The Indian National Army in Battle, 1944-1945.” *War & Society* 13, no. 1, 49. For details of Japanese deployment of the INA see “Paper Tiger,” 41. 15,000 said to be deployed in Tilak Raj Sareen, *Indian National Army: a Documentary Study* (New Delhi: Gyan, 2004), vol. 5, 346. Hereafter *INA Documents*.

field leadership.<sup>7</sup> The INA was, as a 1946 British military analysis of its wartime role put it, “David against Goliath but a David without a sling. It had enthusiasm and revolutionary ardour, but [lacked] most of the other military requisites.”<sup>8</sup>

The Japanese had somewhat more faith in the potential political and propaganda value of their Indian army. The charismatic leader of the INA, Subhas Chandra Bose, had promised mass desertions of Indians from the British lines in Burma and an Indian uprising as the army of his Provisional Government of Free India marched, “On to Delhi.” Neither materialized.<sup>9</sup> Already by the summer of 1944 INA soldiers were “dying like flies” due to starvation, and as the long Japanese retreat in Burma accelerated towards the end of the year and widespread disease compounded the lack of food and supplies, hundreds of Indian desertions began to flow in the other direction.<sup>10</sup> Given the circumstances, however, it was remarkable the army held together at all. As Shah Nawaz Khan, one of the first three INA officers to face trial following the war, pointed out in his written statement to the court, “no mercenary, or puppet army could have faced the hardships as the INA did.”<sup>11</sup> Most

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<sup>7</sup> On the military performance of the INA see Sundaram “Paper Tiger,” 53 and “Note by the C.S.D.I.C. (I). on the Part Played by the INA in Active Operations Against Allied Forces” W.O. 208/868. P.R.O. in *INA Documents*, vol. 5, 342-346. There were exceptions. One battalion in the 2nd Regiment, 2nd Division was repeatedly singled out for British praise. Interestingly, that battalion was commanded by P. K. Sahgal and its Division commander was Shah Nawaz Khan, two of the three to stand trial in the first postwar Red Fort Trial.

<sup>8</sup> See “Note by the C.S.D.I.C.,” 341.

<sup>9</sup> Peter Fay discusses a few isolated cases of desertions to the INA in Burma in Peter Ward Fay, *The Forgotten Army: India's Armed Struggle for Independence 1942-1945* (University of Michigan Press, 1995), 296 and 412. 40 out of 805 predicted court-martial cases according to one October, 1945 were for desertions to the INA or 950 Regiment (as opposed to being taken prisoner). “Treatment of Indian and Burman Renegades and Collaborators with the Enemy” L/WS/1/1577: ff 142-7 TOP vol. 6 #154, 370.

<sup>10</sup> Sugata Bose claims that desertions from the INA were very limited in number. Sugata Bose, *His Majesty's Opponent: Subhas Chandra Bose and India's Struggle Against Empire* (Cambridge, Mass: Belknap Press of Harvard University Press, 2011), 283. On mass desertions by the INA to the British, see Chandar S Sundaram, “A Paper Tiger: The Indian National Army in Battle, 1944-1945.” *War & Society* 13, no. 1, 340. See also “Note by Military Intelligence on the activities of I.N.A. in Burma during 1945” F. No. 601/7378/H.S. *INA Documents*, vol. 4, 173.

<sup>11</sup> Gurubkshasimha Dhillon, *From My Bones: Memoirs of Col. Gurbakhsh Singh Dhillon of the Indian National Army, Including 1945 Red Fort Trial* (New Delhi: Aryan Books International, 1998), 464.

other local military collaborators of the Japanese empire would likely have long since completely dissolved under similar conditions as they would in the Philippines and throughout occupied China, or else rebelled against their Japanese sponsors, as did the Burma National Army.

The flagging loyalties of the INA did spread alarm among its leaders. In the first half of March, 1945 there was, according to British sources, a mass surrender of elements of the 4th Guerrilla Regiment, known as the Nehru Brigade, and the more troubling desertion of several key officers of the 2nd Division.<sup>12</sup> Already faced with the deep distrust of Japanese officers, Subhas Chandra Bose was so disturbed by the desertions that on March 13 he issued two special orders of the day addressing the “cowardice and treachery” of those who had marred the reputation of the INA. He called for the writing of poems, articles, and the performance of plays expressing “hatred and disgust” for the deserters. He called for the creation of effigies of the traitors so that everyone could then vent their anger against them.<sup>13</sup> After giving those no longer willing to fight for the cause of Indian independence a week-long grace period to leave the service, he announced new measures to “destroy completely the germs” of cowardice by granting any INA soldier the right to arrest or shoot on the spot anyone behaving in a “treacherous” manner. “There is no crime more heinous and despicable,” he concluded, “than to be a coward or a traitor.”<sup>14</sup> The words could just as well have been spoken by British colonial officials in reference to the entire INA.

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<sup>12</sup> “Note by Military Intelligence on the activities of I.N.A. in Burma during 1945” (22 May, 1945) in *INA Documents*, vol 4, 174. Gurbakhsh Singh Dhillon, who commanded the Nehru brigade at the time, discusses the desertion of the officers but does not mention any “mass surrender” of his troops in March. Instead, he mentions only the desertion of five men from a single company. Dhillon *From My Bones*, 304.

<sup>13</sup> “Special Order of the day by Bose for Dealing with Desertion in the I.N.A.” (13 March, 1945) in *INA Documents*, vol 4, 101.

<sup>14</sup> This comes from the second special order of the day, “Special Order of the day by Bose for Dealing with Desertion in the I.N.A.” (13 March, 1945) in Sareen *ibid.*, vol 4, 103. Also as “Bravery and Cowardice” in Siri K. Bose and Sugata Bose ed. *Chalo Delhi: Writings and Speeches 1943-5* Netaji Collected Works vo. 12 (Calcutta: Netaji Research Bureau, 2007), 314-316.

However limited its value was in combat or in securing mass desertions from the Indian Army, to thousands of Indians across the subcontinent, the Indian National Army became the stuff of legend: the only Indian army of men—and women, since the INA included a small unit of women soldiers—who had taken up the sword against the Raj since the rebellion of 1857. The parallels were apparent from beginning to end. In September 1943 Bose had held a ceremonial parade of the INA on the tomb of last Mughal emperor Bahadur Shah Zafar who died an exile in Burma, while both the treason and murder trials of Bahadur in 1858 and the opening trial of INA officers for similar crimes were held in Delhi's ancient Red Fort.<sup>15</sup> The Indian National Army was not, however, an ordinary military force: it first took shape in Singapore as an army of Prisoners of War in February 1942.<sup>16</sup> After an early version of the INA under the command of Mohan Singh failed to live up to Japanese expectations, the army was renewed in July, 1943 following the arrival on the scene of the far more influential and effective leader, Subhas Chandra Bose.

Histories of the Indian National Army usually begin either with the political career of Subhas Chandra Bose, or with the details of exploits of Indian nationalists within Japan such as Rash Behari Bose. These histories converge upon Singapore, either in 1942, when emphasizing the thread of Japan-based developments, or in 1943, when emphasizing the importance of Subhas Chandra Bose's arrival. In both cases, the establishment of the INA serves as a component of a larger narrative of

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<sup>15</sup> Sugata Bose, *His Majesty's Opponent: Subhas Chandra Bose and India's Struggle Against Empire* (Cambridge, Mass: Belknap Press of Harvard University Press, 2011), 250.

<sup>16</sup> The history of the Indian National Army is a complex one and will not be reviewed in detail. Already before the fall of Singapore some 200 "Fujiwara volunteers" had formed, named for the then Major Fujiwara Iwaichi, whose intelligence outfit the *Fujiwara Kikan* was responsible for creating an army of Indian volunteers. However, the term "Fujiwara volunteers" are elsewhere described as those who joined just after Singapore fell. The "first" Indian National Army that grew out of it commanded by Mohan Singh and tied to the Indian Independence League led by Rash Behari Bose in Tokyo. This first INA was disbanded by Singh in December, 1942, after which he was arrested by the Japanese. The INA only revived with the arrival of Subhas Chandra Bose in the summer of 1943. For this earlier period see Hugh Toye "The First Indian National Army, 1941-42." *Journal of Southeast Asian Studies* 15, no. 2 (September 1, 1984): 365-381.

India's struggle for independence. These histories help place the INA in the context of the history of Indian nationalism, and serve well to highlight some of the movement's unique features. However, they can also obscure the role of the INA as one of many armies founded, equipped, and closely supervised by a sponsoring state during the Second World War.

The formation of military units composed of foreign volunteers recruited abroad or conscripts raised from an occupied territory was common on both sides during the conflict.<sup>17</sup> As was the case in World War I, the most important of these took the form of colonial levies. The British, French, Dutch, and Japanese all fielded forces from their colonies, the largest and strongest being the very Indian Army that many of the INA soldiers had betrayed. Every major campaign in the European conflict also included at least some of forces of non-colonial origin. Germany, in particular, recruited a wide range of nationalities on an impressively large scale. In many cases, however, foreign volunteers fighting for Germany were motivated by a fear of Soviet occupation or a positive identification with the new racial order promised by National Socialism. Thousands of others, including several thousand Indians, were actively recruited directly from POW camps in violation of the 1929 third Geneva convention.<sup>18</sup> In addition to a Free Indian Legion founded by the future INA leader Subhas Chandra Bose, thousands of Armenian, Azerbaijani, Uzbek, Kazakh, and Turkmen POWs from the Soviet Union fought effectively against the Allies in Italy as the 162nd Infantry Division.<sup>19</sup> A full cavalry division of pro-German Cossacks, composed in large part of POWs, waged

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<sup>17</sup> The Spanish Civil War and the Winter War in Finland were the other two major conflicts of the 20th century in which foreign volunteers figured prominently.

<sup>18</sup> This 1929 agreement offered protections for Prisoners of War and barred them performing any labor connected with the operations of war. Germany ratified the agreement. Japan signed but did not ratify it.

<sup>19</sup> Troops of the Indian Legion eventually fought briefly in the Infantry Regiment 950. See Rudolf Hartog, *Im Zeichen Des Tigers: Die Indische Legion Auf Deutscher Seite, 1941-1945* (Herford: Busse Seewald, 1991).

a campaign of brutal anti-partisan warfare.<sup>20</sup> Tens of thousands of Georgian and other Soviet POW-recruited battalions were attached to existing German Divisions, and a small number of “German-Arab” forces, recruited from among the surrendered colonial armies of Britain and France served in the Caucasus, Italy, Greece, and North Africa.<sup>21</sup> The largest army of POWs in Europe were, however, the two divisions of a “Russian Liberation Army” under the command of the captured Soviet general Andrei Vlasov that fought briefly for Germany in the last days of its retreat, only to face mass execution in the aftermath of war at Soviet hands.<sup>22</sup>

Despite complementing its rapidly depleting manpower, none of these hastily assembled forces contributed significantly to the German war effort and their value was, as would be the case for the Indian National Army, primarily political. Among Japan’s POWs the only direct counterpart to the INA, as we shall see in Chapter Four, was the Philippine Bureau of Constabulary, also formed in 1942. Other attempts to equip and sponsor local military forces took advantage of existing local military forces or freshly trained recruits. Among Japan’s enemies, the closest other equivalents in East Asia were Korean and Japanese POWs recruited by Chinese Communist forces.<sup>23</sup>

Among all these many POW armies, as well as other military collaborators of Japan, the Indian National Army is deservedly the most famous and well-studied. Only the INA developed

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<sup>20</sup> Samuel J. Newland, *Cossacks in the German army, 1941-1945* (F. Cass, 1991). On their role in anti-partisan warfare in Yugoslavia see 150-169.

<sup>21</sup> From early 1942, German Divisions were permitted to recruit several thousand auxiliary troops from among POWs. Newland *ibid.*, 46. The number of Western POWs recruited, including the famous British Free Corps, never exceeded a few dozen.

<sup>22</sup> See Catherine Andreyev, *Vlasov and the Russian Liberation Movement: Soviet Reality and Emigré Theories* (Cambridge University Press, 1990).

<sup>23</sup> For the most part, however, these were mobilized not as armed soldiers but as agents of propaganda. After Japan’s defeat a considerable number of surrendered Japanese soldiers did fight in the Chinese Civil War and were utilized by the British in Southeast Asia. See Donald G. Gillin and Charles Etter. “Staying On: Japanese Soldiers and Civilians in China, 1945-1949.” *The Journal of Asian Studies* 42, no. 3 (May 1, 1983): 497-518. Stephen Connor, “Side-stepping Geneva: Japanese Troops Under British Control, 1945-7,” *Journal of Contemporary History* 45, no. 2 (April 1, 2010): 389-405.

simultaneously as a military force and as a broad-based political movement with significant support amongst hundreds of thousands of Indian civilians across Southeast Asia as well as in China and in Japan's home islands. The prestige and mystery surrounding its most charismatic leader, Subhas Chandra Bose, and the brief but significant postwar role it played in the final chapter of British rule in India ensured that an army with virtually no military significance earned an enduring place in historical memory.

### *British Leniency for Captured INA*

The early response of the British Army to the existence of treasonous Indian subjects collaborating with the Japanese was marked, with a few exceptions in the field, by understanding and lenience. An evolving process of classification was established, but one in which the vast majority of those who were classified were slated for quick release, reform in "holiday camps" or dismissal from the British Army. In this early stage, the INA were primarily seen as misled and demoralized soldiers who required treatment and restoration. Only a few were seen as beyond reform, and most were seen as worthy of the trust required to redeploy them in the war against Japan. They were traitors, perhaps, but their conduct was not regarded with the severity it would later take on, or become associated strongly with atrocities or abuse of prisoners.

In the early postwar period, and in many works since, the INA was remembered primarily as an army of surrendered soldiers. In fact, perhaps only around half of the 40,000 or so members of Indian National Army at its peak were former POWs. The remainder were recruits from among Indian civilians, predominantly in Japanese occupied Malaya.<sup>24</sup> According to at least one Japanese

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<sup>24</sup> Peter Fay addresses the wide disagreement over the total number of INA, see Fay *ibid.*, 459. One detailed January 1946 report on the total number of INA and charts of what units they came from in "Note by C.S.D.I.C. Red Fort, Delhi on the Number of Indian PW who Joined the INA" W.O. 208/818 P.R.O. *INA Documents* vol. 5, 311. There is also a named list of 1602 deceased INA 'martyrs' and what is surely a very incomplete list of over 14,000 INA

officer who fought with them, these civilian recruits, mostly Tamils, fought as well if not more effectively than their putatively better trained counterparts from the ranks of the Indian Army.<sup>25</sup> From the beginning British policy towards the handling of captured INA soldiers recognized the distinction between the two groups and treated them differently throughout the process. At Japanese surrender, only “civilian” INA members who were domiciled in India were to be evacuated there.<sup>26</sup> Ultimately, at least some among these INA soldiers and laborers, who had never set foot on the Indian subcontinent, were “returned” to India to await potential punishment as traitors.<sup>27</sup>

Beyond the division into “civilian” and “military” (former POW) members of the Indian National Army, British categorization of the INA entered the psychological domain. This process of classification had already begun under the Japanese. Indian POWs targeted by the Japanese for recruitment into the INA were subject to schemes of classification that began with an evaluation of their loyalties. Official Japanese military policy was that Indian POWs were to be divided into three classes: 1) Those who were anti-British, pro-independence, and fit to fight. These were to be actively recruited as soldiers for the INA. 2) Sympathetic Indians who were not fit to fight. These were recruited into labor units. 3) Those who were considered anti-Japanese and pro-British. These were to be accorded regular status as prisoners of war but were, at least according to official policy, to be “treated much better than” white prisoners.<sup>28</sup> The thousands of Indian POWs who made their way into the first category came with a range of motives, which included, for many, a genuine belief that

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veterans listed in the three volumes by the All India INA Committee. S. S. Yadava ed. *Forgotten Warriors of Indian War of Independence, 1941-1946: Indian National Army* (Gurgaon: Hope India Publications, 2005).

<sup>25</sup> Sundaram, *War and Society*, 53.

<sup>26</sup> “Report on Security Measures taken by the British against the Indian National Army during the War” F. No. 601/12539/H.S. in *INA Documents* vol. 4, 284.

<sup>27</sup> Ramesh S. Benegal, *Burma to Japan with Azad Hind: A War Memoir 1941-1944* (Lancer, 2009), 134.

<sup>28</sup> “Japanese Orders for the Treatment of I.N.A. and Handling of Indian Army Soldiers, who would Join them (Extract)” *INA Documents*, vol. 3, 23-4.



the INA offered an opportunity to meaningfully contribute to the liberation of India from British rule.<sup>29</sup>

However, coercion could also play an important role. In the early stages of recruiting in 1942 many of those who were unwilling to join the INA were subject to harsh beatings and torture, while the rest faced the prospect of even more backbreaking labor and the high fatality rates in Japanese POW camps.<sup>30</sup> Despite reports of coercion, some of those who did join the INA denied that there was any unfair treatment meted out to those unwilling to fight for the Japanese. Prem K. Sahgal insisted in his statement at his postwar treason trial that non-volunteers in the camp he occupied at Tengab Aerodrome received adequate rations and were not pressured to join the INA.<sup>31</sup> As we shall see, the fate of Indians who remained loyal to the Allies weighed heavily in the minds of the British military most in the later stages of the debate over how to deal with the INA. With a few exceptions, from 1943 to the spring of 1945 the problem of the JIFs (Japan's Indian Fifth-columnists), as those such as the INA and others suspected of collaborating with the Japanese were called, was handled almost entirely as if the Indian Army faced not a judicial challenge, but a curable medical problem.

The British military interrogated recovered POWs, suspect refugees, and stragglers to expose spies and INA members.<sup>32</sup> Prior to 1944, when there were limited opportunities to capture

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<sup>29</sup> According to one estimate, there were only some 5,000 "staunch non-volunteers" among some 45,000 POWs who were gathered for recruitment into the INA in Singapore on February 17, 1942. See Fay *ibid.*, 525. For a perspective which explores the success of the INA in recruiting POWs in the earlier stages in the broader context of the history of the Indian Army see Trak Barkawi, "Culture and Combat in the Colonies: The Indian Army in the Second World War." *Journal of Contemporary History* 41, no. 2 (April 1, 2006): 325-355.

<sup>30</sup> This is according to testimony in the early postwar trials of former Indian POWs who refused to join. For a summary of witness accounts of beatings for refusing to volunteer see "Prosecution Address at I.N.A. Trial, Red Fort" in *Indian National Army: A Documentary Study*, vol. 5, 231-239. See also Sundaram *ibid.*, 339 and 342.

<sup>31</sup> Dhillon, *From My Bones*, 468. A similar claim was made by co-defendant Gurbakhsh Singh Dhillon, but he was not in the non-volunteer camp, *ibid.*, 478.

<sup>32</sup> I have been unable to determine whether process of filtering applied to only Indians and other ethnic groups or whites as well.

significant numbers of the weaker early incarnation of the INA, the total number of suspected collaborators with Japan who had been arrested was still not trivial. An incomplete collection of three May, 1943 rosters of suspects arrested under Defense of India Rules by the Forward Interrogation Camp at Chittagong, including, but not limited to INA suspects, lists 156 names, but the serial numbers suggest 352 prisoners, all of whom were arrested in the span of a few months in the spring of 1943.<sup>33</sup> The specific allegations are not listed, and though close to the front, those listed could have been detained for a number of specific politically subversive crimes, of which “waging war against the King” was only one. The list was also not limited to Indian subjects; containing some recognizably Burmese and Chinese names and labeled as having been apprehended in Burmese districts. Only 41 were sent to civilian jails and the fate of the other prisoners is not clear.

Those who emerged from enemy occupied territory who did not qualify for “quick release” were detained and any suspected deserters or known INA were eligible for an immediate Court of Inquiry. These Courts of Inquiry posed the most serious threat to the lives of INA soldiers who were captured since their fate could be determined in the field, where the process was subjected to little public scrutiny. It was only in the small number of these courts-martial that, in addition to INA special service infiltrators caught spying within India, a small number of INA soldiers captured on the front were court-martialed and executed for the crime of “waging war against the King” from 1944 to early 1945, well before the famous postwar trials at the Red Fort in Delhi.<sup>34</sup> Though military

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<sup>33</sup> “District Magistrate, Chittagong to the Additional Secretary, Government Bengal, giving a list of persons arrested” Government of Bengal (Home) Def. Branch W/356/43 (29 May, 1943) Council of Historical Research Indian, *Towards Freedom: Documents on the Movement for Independence in India, 1946* (New Delhi: Oxford University Press, 2007), vol. 3, 2714-2720. Hereafter *TF*.

<sup>34</sup> See the “List of Heroes of the Indian National Army Who Were Executed” numbering some 22 (including many executed infiltrators) in Yadava *ibid.*, vol. 1, 127-8. There was also one other executed INA member, Kumaran T. P. not on this list but listed as executed among the list of deceased INA that follows, 192. Harkirat Singh says 27 INA were court-martialed during the Imphal campaign of 1944, 9 of which were hanged. See Harkirat Singh, *The INA Trial and the Raj* (New Delhi: Atlantic Publishers & Distributors, 2003), 38. Peter Fay also counts 9 hanged during the war. See Fay *Forgotten Army*, 439. Some other non-INA affiliated Indians accused of being spies in Japanese

proceedings against desertion and other infractions were being carried out in the thousands throughout the world, initial orders that allowed British officers to hold Courts of Inquiry of INA soldiers were later changed to limit them only to those cases cleared beforehand by General Headquarters.<sup>35</sup>

In this earlier period, the British response was guided less by a desire to eradicate treason than to prevent any impact on the morale of other British and Indian soldiers in the field. This contrasts significantly with later internal criticism of early postwar trials that was primarily concerned with the impact upon nationalist sentiment throughout the Indian subcontinent. The 1944 decision to limit Courts of Inquiry specifically noted the need to reduce the possibility that suspects or their trials might become known to the troops. Rather than concern about sympathy for troops being tried, it was seen as important that the continued existence of other treacherous persons still in occupied territory might be kept secret.<sup>36</sup>

With the exception of those subjected to the small number of Courts of Inquiry, recovered POWs and known INA personnel were to be sorted once again. After being sent to forward interrogation centers, suspects were all to be divided into three categories based on their perceived loyalty and morale: Whites, Grays, and Blacks.<sup>37</sup> This color coding process is described in all historical accounts of the fate of the INA, but it is rarely pointed out that the definition of these

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service were also imprisoned or executed within India during the war. The judgment in one April 1943 trial of 19 accused enemy agents, two of which were sentenced to death can be found in "Trial of enemy agents at Madras" File No. 2/4/43 Home Poll (I) in *TF* vol. 3, 2685-2710.

<sup>35</sup> "Report on Security Measures Taken by the British Against the Indian National Army during the War" F. No. 601/12539/H.S. *INA Documents*, vol 4, 254.

<sup>36</sup> Another consideration was the impact any loss of pay or family allotments might have on dependents still in India, making a deferment of any trial desirable. *Ibid.*

<sup>37</sup> Fay *ibid.*, 396. Lebra, *ibid.*, 201. "Military Intelligence Assessment of the Indian National Army by Subhas Chandra Bose; Issues Guideline for Dealing with It" (November 10, 1943) War officer No 203/4756. PRO in *Indian National Army: A Documentary Study* *ibid.*, vol. 2, 251.

categories and the treatment of each category evolved over time. In fact, the color-coding practice may have only gradually become instituted during the course of 1943. Among the several hundred spring 1943 arrestees at the forward interrogation camp at Chittagong mentioned above, for example, only a small minority of the prisoners were assigned a color, with some 11 prisoners categorized “Gray” and 12 “Black.”<sup>38</sup>

The “White” category was used for INA personnel whose loyalty and morale were unaffected by their exposure to enemy propaganda during their period of time serving the Japanese military, or at least were found to be “no longer” affected.<sup>39</sup> They were variously described as having joined the INA to avoid hardship or else merely following the orders of their immediate superiors. Whites could be sent directly to regimental centers or military depots following interrogation and from there were sent on leave. Upon return to service following leave, the behavior and morale of Whites were to be “discretely observed” for three months. In mid-1944 this policy was changed to allow Whites to be quickly re-assigned to combat units without leave, both because of their value as battle-hardened soldiers and because, “Whites were eager to return and have another crack at the Japanese.”<sup>40</sup>

Military Grays were individuals whose loyalty and morale were “temporarily affected” by Japanese influence, but were soldiers who were not considered, “fundamentally disloyal.”<sup>41</sup> Elsewhere they were described as men who had been misled but were not active leaders within the INA.<sup>42</sup> As early as December 1942, the policy for handling these men of dubious loyalty was to

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<sup>38</sup> It is possible that the other arrestees defaulted to “White” or else were civilian suspects accused of political crimes unrelated to the INA.

<sup>39</sup> “Report on Security Measures taken” *INA Documents* vol. 2., 256.

<sup>40</sup> *Ibid.*, 264.

<sup>41</sup> *Ibid.*, 256.

<sup>42</sup> Report of Field-Marshal Sir Claude Auchinleck, Commander-in-Chief in India covering the period 1 January to 31 December 1945: Historical Section, Defense Ministry, Government of India, New Delhi, 20. Quoted in Lebra *Japanese-Trained Armies.*, 201.

dispatch them to a camp organized “in the guise of a Holiday Rest Camp” in the scenic Himalayan Shimla hills at Sabathu and later in Multan for “reconditioning.”<sup>43</sup> While at the camp, military Grays were to receive complete rest, good food, adequate amenities, radio, cinema, lectures, facilities for sport, and military parades sufficient to “restore gradually martial spirit and beaming.”<sup>44</sup>

Grays were thus treated not as suspected traitors, but as men afflicted by a contagious medical condition. In this respect these soldiers were not alone in Sabathu, as the small town had, since 1837, also been the site of a large Leper Asylum.<sup>45</sup> Some 1,500 Gray “patients,” as they were self-consciously referred to, had passed through the camp by the end of 1944 and, with the exception of negative reports in two cases, emerged fully “recovered” following the five to eight weeks of treatment. Recovered Grays were then reclassified as Whites and either returned to their regiments or sent on leave. Unlike Whites, however, recovered Grays who were returned to service were generally not sent to an operational or active combat districts.<sup>46</sup>

This approach to disloyalty taken by the British military authorities was, up until this point, mostly an effort to reverse the circumstances of INA recruits in the POW camps who faced a choice between hardship and heavy labor or treason and possible death in battle. The struggle to “recover” the loyalty of these men was primarily seen as a struggle to overcome the mental hold of enemy propaganda. A similar process was employed by the Japanese who provided “rejuvenation” training for captured Philippine soldiers in 1942. This intensive re-education process was designed to cure the

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<sup>43</sup> “Report on Security Measures taken” *INA Documents* vol. 4, 260. Peter Fay lists a number of other locations. Fay, *Forgotten Army*, 436. Even some Burmese subjects who received classification as Grays in the system were given similar treatment as those in the “holiday rest camp” but were sent to the Burma Regimental Center at Hoshiarpur in Punjab. “Report on Security Measures taken by the British against the Indian National Army during the War,” *INA Documents* vol. 2, 263.

<sup>44</sup> “Report on Security Measures taken by the British against the Indian National Army during the War” *INA Documents* vol. 4, 260.

<sup>45</sup> Caroline Atwater Mason. *Lux Christi: An Outline Study of India, a Twilight Land*. (Macmillan, 1902), 156.

<sup>46</sup> “Report on Security Measures” *INA Documents* vol. 4, 263.

soldiers of their enslavement to American ideology.<sup>47</sup> This was also not unlike the rehabilitation Communist efforts directed at thousands of captured Chinese “puppet” troops during and after the war considered in Chapter Seven.

The vast majority of these treasonous troops, some 89% of all those classified by May, 1945 were not only spared prosecution for treason but were mostly returned to regular military service, sometimes after being given leave or reconditioning in the “Holiday Rest Camp.”<sup>48</sup> Those who were returned to their units were treated as normal recovered POWs without the stigma associated with having fought for the enemy, or with any impact upon their rank or benefits. Only their commanding officers would know of their former INA service.<sup>49</sup>

The last of the categories was Black. Until the creation of a Dark Gray classification considered below, Blacks included “all individuals whose morale is permanently affected and who are considered to be fundamentally disloyal and [a] danger to security.”<sup>50</sup> Elsewhere they were described as INA personnel who were “imbued with enemy propaganda and remain actively hostile.”<sup>51</sup> Their treason posed the greatest risk of contagion and military Blacks were to be rapidly and secretly returned to India and denied any communication with the outside world. Regulations for the secret detention of military Blacks were issued in early 1944 by the Home Department of the Government of India. However, since captured or deserted INA forces had already begun to trickle into British hands since January 1943, Blacks were initially sent to a variety of camps and jails. Only in the

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<sup>47</sup> See Chapter Five.

<sup>48</sup> “Report on Security Measures,” 278.

<sup>49</sup> “Philip Mason, Joint Secretary War Department to Sir Richard Tottenham Regarding the Treatment of I.N.A” F. No. R/3/1/330 *INA Documents*, vol. 4 183.

<sup>50</sup> “Report on Security Measures taken” *INA Documents* vol. 4, 256.

<sup>51</sup> Lebra, *Indian National Army and Japan*, 201.

summer of 1943 did the first group of these “special prisoners” arrive at a central detention center for Blacks at Attock Fort, some 90 kilometers west of Rawalpindi.<sup>52</sup>

As the number of INA personnel who fell into British hands dramatically increased in number in the spring of 1945, the soldiers seen to fit this category exploded. When Rangoon fell in May, 8,000 military INA suspects surrendered or were captured, more than tripling the number of those who had passed through British hands up to this point. There were now simply too many to accommodate in any “Holiday Rest Camp.”<sup>53</sup> Initially, this resulted in a further easing of the policy. Grays were directly returned to regimental centers and issued certificates of leave that designated them, “recovered P.W. classified ‘Grey’ but to be treated as ‘White.’”<sup>54</sup> Some of these Grays, however, were seen as more in need of “treatment” than others, and the new policy spawned yet another category, “Dark Gray.” Dark Grays, who up to the fall of Rangoon only numbered 126 INA and members of the German Indian Legion, were seen as requiring a much longer period of reconditioning before they were fit to return to service, or else were discharged from the Army should the Holiday Rest Camp fail to reform them.<sup>55</sup> Indian Legion soldiers back from Europe, known as HIFs or “Hitler’s Indian Fifth-columnists,” were especially suspect as, “on the whole more

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<sup>52</sup> These efforts at secrecy largely failed, however, as information about Blacks leaked out as hundreds of Grays and Whites were released and redeployed. A list of 346 INA suspects arrested at the Forward Interrogation Camp, Chittagong from January to May 1943 can be found in “District Magistrate, Chittagong to the Additional Secretary, Government of Bengal, giving a list of persons arrested” Gov. of Bengal (Home) Def. Branch, File No. W/356/43 in *Towards Freedom: Documents on the Movement for Independence in India* *ibid.*, vol. 3, 2714-2720. on the 1944 regulations and Attock Fort see “Report on Security Measures taken”, 257. Fay mentions another camp to which blacks were sent in the spring of 1945 northeast of Calcutta. Fay *ibid.*, 403. By the end of the war, many Blacks were sent to the Red Fort in Delhi for detention.

<sup>53</sup> “Report on Security Measures” *INA Documents*, vol. 4, 278.

<sup>54</sup> *Ibid.*, 262.

<sup>55</sup> *Ibid.*, 280. *Ibid.*, 278. There is also a list here of 3,513 total captured personnel from the INA and Indians in the German Regiment 950 in Europe from 1942 to before the fall of Rangoon in May, 1945. These included 1,985 Whites, 257 Blacks, 126 Dark Gray, and 1,145 Grays. The number of Grays listed there, 1,145 is much smaller than the 1,500 reported to have “recovered” in the Holiday Rest Camp.

hardened traitors” who had been “deeply impressed by German methods, efficiency, equipment and ruthlessness.”<sup>56</sup> As we shall see in Chapter Three, this reputation may have been due in part to the conduct of some of the Legion’s members in France during the final days of the European war.

With the introduction of the new Dark Gray classification and the flow of thousands of new INA personnel into British custody in 1945, the Black category also narrowed accordingly, in order to exclude any and all personnel for whom there remained the possibility of a “favorable” reaction to rehabilitation. It was now only to include civilian or military subjects who, judged immune to reform, constituted a serious and permanent threat to security, or a military subject who it was considered should be brought to trial for a criminal offense.<sup>57</sup> The classification system now contemplated not only the psychological dimension, that is, the consideration of loyalty and thus any potential future betrayal, but the more concrete possibility of eventual prosecution, though there was still no direct discussion of what specific criminal offenses Blacks would be prosecuted for beyond the treason Courts of Inquiry could have tried them for in the field.

### *The Hardening of British Policy Towards the INA*

Histories that discuss the fate of the INA have rarely considered the leniency of British policy during the war and focus exclusively on the small number of postwar trials.<sup>58</sup> They thus do not need to recognize the fact that this policy changed quite suddenly as the conclusion of the war neared.

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<sup>56</sup> “Note by R. F. Mudie, Regarding Treatment of INA” (25 Aug., 1945) *INA Documents* vol. 4, 237.

<sup>57</sup> “Report on Security Measures taken,” 279.

<sup>58</sup> T. R. Sareen mentions the holiday camps in passing. Tilak Raj Sareen, *Japan and the Indian National Army* (New Delhi: Mouno Pub. House, 1996), 208. Joyce C Lebra, *The Indian National Army and Japan*, 201-2. Kalyan Kumar Ghosh and Joyce Lebra only address the British policy towards the INA from the close of the war. Kalyan Kumar Ghosh, *The Indian National Army; Second Front of the Indian Independence Movement* (Meerut: Meenakshi Prakashan, 1969), 199. Peter Fay notes that that Whites and Grays were released, but does not mention their return to combat.



Exactly why this took place is a mystery that this dissertation is not able not resolve decisively. It might be argued that the policy changed because what was not possible before had become possible: during the war troops were needed for redeployment, and any potential risk to morale by mass punishment too great. This explanation is unconvincing, however, since the conclusion of the war brought even greater instability to the Indian subcontinent, not less. Wartime controls against subversive acts lost their justification with peace, and deferred calls for devolution of power would have to be answered by a substantially weakened empire. British colonial and cabinet officials did suggest that releasing INA soldiers would reward their disloyalty and compound this instability in the postwar period, but this new justification was not raised in documents from the military forces that were carrying out the categorization process in the forward interrogation centers themselves.

Another explanation, which we will consider below in greater detail, lies with an increase in a desire for vengeance. Was the hardening of the policy due to a growing anger at the brutality of Indian collaborators with the Japanese toward Allied prisoners, a recognition of a hatred among soldiers who suffered heavy losses on the Burmese front, or Indian prisoners who contrasted their own suffering with the presumed benefits of the INA alternative? This accords with justifications produced at the time, but in materials I have found, the evidence for the breadth of these sentiments come from vague and indirect references by colonial officials, with only a few direct contemporary reports and later memoirs suggesting its severity.

Between May and August 1945 the policy which focused on the release, redeployment, or treatment of treasonous “patients” to one which assigned more and more INA soldiers into the category of Blacks. This category was also increasingly described in terms of the eligibility of its members for future prosecution. This shift coincided with a separate re-categorization of all potentially threatening “Security Prisoners” carried out throughout India that usually had the

opposite outcome. Thousands of cases of were being reviewed to determine their potential qualification for release at end of the war. These cases included such diverse individuals as detained Congress party politicians, Japanese agents and convicted terrorists. All Japanese and other enemy agents were to be released automatically at the close of the conflict, while others subject to preventive detention would become eligible for release.<sup>59</sup> While there was an unmistakable trend towards an easing of security measures and detention policies domestically, INA policy was moving in the opposite direction.

A weekly security intelligence summary in June, 1945 included a summary of an interrogation of one of the commanders of the four INA guerrilla regiments, warning of future threats. The commander expressed the view that any captured INA soldiers returned to their units would play the part of “good and well-disciplined soldiers on parade” but that off duty they would talk about their experiences in the INA and, as a result, nationalism would infect the entire Indian Army.<sup>60</sup> The same report claimed that loyal soldiers of one unit in Rangoon “would not hesitate to shoot” INA soldiers as traitors, and that Indian officers in the same unit felt that INA members should only be allowed to return to India if cleared of guilt in a court-martial.<sup>61</sup>

In a June letter by Philip Mason, the Joint Secretary to the War Department (India) who would become one of the key individuals in the formation of policy towards the INA, proposed three possibilities for handling the large numbers of INA soldiers coming into British hands: 1) they could be court-martialed whenever evidence was available but this would lead to a “considerable number of death sentences,” 2) a limited number could be allowed to stand for court-martial, with most

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<sup>59</sup> The release was to coincide with the expiration of the 1944 Restriction and Detention Ordinance III. “Government of India, Home Department to all Provincial Governments and Chief Commissioners” (17 May, 1945) *TOP* vol. 5, 1042.

<sup>60</sup> “Note by Military Intelligence (Extract)” (15 June, 1945) L/WS/1/1506: f 126 *TOP* vol. 5 #512, 1128.

<sup>61</sup> *Ibid.*, 1129.

sentences remitted or 3) all offenders could be treated lightly. Of these, the War Department favored the second option, “by which all Blacks against whom there is sufficient evidence would be brought to trial, and sentenced in accordance with the law,” though only severe cases would result in execution. At this point, the disloyalty of the INA soldiers was the primary consideration—there was no mention in the letter of the accusations of atrocities that would become central in the eventual trials. Mason noted that the lenient treatment accorded to the INA already amounted to a “whitewash” and that any limiting the scope of trials would allow “traitors” to go “virtually without punishment.”<sup>62</sup>

The emergence of a more concrete discussion about prosecutions for INA Blacks was important but the hardening of British policy also extended to a reevaluation of the treatment of Grays. Soldiers who had until recently been returned to their units and treated as Whites without any stigma attached were now considered for harsher treatment. In a 6 August meeting between Indian Governor-General Archibald Wavell, Indian Army Commander-in-Chief Sir Claude Auchinleck, and Home and Finance members, everyone agreed that Grays should be discharged from the Indian Army, with the main point of disagreement being over whether they were to receive back pay for their time as prisoners of war. In his diary entry on the meeting, Governor-General Wavell recorded his strong opposition to the offering of back pay for traitorous soldiers, “I really could not stand for our paying men to fight against us.”<sup>63</sup>

Meanwhile, the number of Blacks as a percentage of the total INA surrendered or captured significantly increased by Japan’s surrender. Among those captured before the fall of Rangoon in

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<sup>62</sup> “Philip Mason, Joint Secretary War Department to Sir Richard Tottenham Regarding the Treatment of I.N.A” (12 June, 1945) F. No. R/3/1/330 INA Documents vol. 4, 181-2. Mason preceded his description of the policy options by suggesting that, up until this point, only a few cases had become “ripe for prosecution” and thus had resulted in convictions. However, this ignored the fact that those few convictions that had been reached during the war led directly, as noted above, to orders being given which required special permission to proceed with Courts of Inquiry. In other words, any requisite ripening was being actively prevented by the army.

<sup>63</sup> Archibald Percival Wavell *Wavell: The Viceroy’s Journal* (London: Oxford University Press, 1973), August 6, p 161

early May 1945, Blacks and Dark Grays numbered only 383 out of 3,513 (About 11%) INA and Indian Legion in custody.<sup>64</sup> By 11 August, when a real debate over the scope of prosecutions began, the total of Blacks were estimated at 7,600, out of around 16,000 recovered INA and a few thousand members of the Indian Legion (47%, but likely around 30% if the Indian Legion is excluded).<sup>65</sup> For an estimated 5,600 of these Blacks, it was felt there would be insufficient evidence to merit court-martial some kind. For another 1,400, it was believed there was evidence to convict but that there would be “practical difficulties” in carrying out the court-martial. Trials were proposed for some 600 Blacks.<sup>66</sup>

The rapid increase in proportion of Blacks and the high number of proposed trials at this particular moment is puzzling. Those captured before the fall of Rangoon would likely have included most of the troops who, chosen by Subhas Chandra Bose for their martial ability and loyalty, were among the mere quarter or so of the INA forces who were actually deployed in the combat areas of western Burma at various points in 1944. It is reasonable to expect that forward-based forces comprised the most dedicated opponents to British rule as well as those who were likely to have had the opportunity to capture or kill Allied personnel in combat. On the other hand, with the exception of leading staff officers under Bose, it is hard to see how the thousands of INA personnel who surrendered around Rangoon, or the thousands of mostly “civilian”—that is those who were not Indian Army POWs—personnel of the 3rd INA division stationed in Malaya could include so many

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<sup>64</sup> “Report on Security Measures Taken”, 278.

<sup>65</sup> Like so many similar numbers of estimates regarding the INA used in the weeks to come, this round number was produced at a time when thousands of INA had yet to be interrogated. “Governor-General (War Department) to Secretary of State” (11 Aug., 1945) L/PO/10/25 TOP v. 6 #17, 49. The total of all those held is not listed, but a later October report lists 16,000 total INA who were formerly Indian Army that had been recovered. The number is thus likely something under 16,000. Fay suggests that 7,000 INA had reached India by September, and 12,000 by November. Fay, *Forgotten Army*, 436.

<sup>66</sup> “Governor-General (War Department) to Secretary of State” *ibid.*

Black “hardened traitors.” These forces surrendered, for the most part, without a shot at Japan’s surrender in August, 1945. On the contrary, many of these Malayan Indians would not even be eligible for transportation to India in the first place. Whatever the logic behind the classification, these greatly enlarged numbers anchored the opening of an August, 1945 dialogue between officials over the establishment of a public policy on the trial of INA crimes. A debate began as a simple case of how to confront large-scale betrayal. Very soon, however, a process of peeling away categories of trial candidates began that would ultimately transform treason trials into trials for treasonous atrocities.

### *Justifying Prosecutions of the INA*

Over the summer of 1945 leading up to Japanese surrender, the British Army produced an alarming number of INA Blacks for potential trial, reversing its earlier policy of leniency. Only at this late point was there any significant discussion of exactly what crime these men would be charged with, what sentences could be expected, and what the impact of the process might be. Only gradually would the discussion shift from one which focused upon the direct security threat posed by the INA to one which highlighted the supposed political consequences of tolerating disloyalty, and finally into a cause of justice which emphasized the brutality and violence of some INA soldiers.

For some, the issue remained a simple question of security. The prospect of 600 estimated court-martials of INA soldiers as put forward by the Home and War departments of the Government of India and Burma on 11 August was immediately questioned by the Secretary of State for India and Burma, Frederick Pethick-Lawrence. Pethick-Lawrence was alarmed at the significant number of the court-martials estimated as well as the prospect of continued detention of thousands of INA personnel.

“Does not the fact of surrender require modification of your proposals? Is not the danger to security which you advance as grounds for detention of the 7,000 Blacks considerably lessened or generally altered in character? I should be glad to know how you now regard the danger of treating these men as Grey?”<sup>67</sup>

Pethick-Lawrence posed the question from the perspective of British wartime policy: the INA had posed a military risk that no longer existed after Japanese surrender. Just as many security prisoners, including some who had carried out or threatened violence against the Raj, were to be released throughout India, what harm was there in reclassifying and releasing the disarmed and demoralized remnants of the INA and the Indian Legion? The response to this challenge guided the course of debate that culminated in the handful of trials at the Red Fort in November and into the spring of 1946.

Three general lines of argument justifying a stronger punitive response can be made out in the letters, conference notes and announcements of British government officials in the months to come. The security threat posed by the INA had indeed been, as Pethick-Lawrence suggested, “generally altered in character,” by the surrender, but according to some of his critics, this did not make the threat they posed any less serious. Colonial officials showed significant concern that leniency shown towards the INA would be perceived as weakness by any potentially disloyal elements within an Indian Army still deployed in the tens of thousands throughout the empire and beyond.

This weakness would also be exploited by contending political forces within India as the prospect of a political settlement loomed. As Prime Minister Clement Attlee put it at a cabinet meeting on 17 August, “Nothing could be worse, if we are about to establish self-government in India, than to let the impression grow that rebellion was an easy thing that need not be taken too

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<sup>67</sup> “Secretary of State to Governor-General (War Department)” (17 Aug., 1945) L/PO/10/25 *TOP* vol. 6, #32, 75.

seriously.”<sup>68</sup> At another cabinet meeting 25 October it was suggested that allowing soldiers who had violated their oaths of allegiance to go unpunished, would, “readily lend itself to action subversive of the Government.” Here however, it was not only the British administration that was threatened, for this potential subversion, “might have incalculable consequences for independent Indian Governments in the future.”<sup>69</sup> Bearing the burden of trying the INA rebels and facing public backlash against the trials was therefore portrayed not merely as a policy which served British self-interest, but which sought to ensure the stability of any future free India.

A related but more direct security concern went beyond the threat to morale within the Indian Army or the showing of a weak hand to rebels in general. Colonial officials feared that released and cashiered soldiers who had served in the INA would soon reemerge as the trained and experienced core of an “Army of Congress” which would rise up against British rule, or else combine forces with existing armed rebels. At a meeting of provincial representatives held on 14 and 15 August, “[The governor of] Bengal in particular stated that their terrorists were eagerly awaiting the return of these determined persons trained in the use of arms, and methods of violence.”<sup>70</sup> Only the detention and a gradual release of those who were no longer regarded as a threat could be countenanced. In an October letter to Pethick-Lawrence, Governor-General Wavell passed on troubling rumors that Congress leader Jawaharlal Nehru had engaged in “subversive conversations” in Lahore, about his, “plan to make use of the INA—large quantities of arms are said to have been

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<sup>68</sup> “Cabinet: India and Burma Committee I.B. (45) First Meeting” L/P&J/10/20 ff 205-11 (17 Aug, 1945) *TOP* vol. 6, #33, 79.

<sup>69</sup> “Cabinet: India and Burma Committee. I.B. (45) 6th Meeting” L/WS/1/1577 ff: 128-32 (25 Oct., 1945) *TOP* vol. 6, #168, 404

<sup>70</sup> “Governor-General to Secretary of State” Telegram L/PO/10/25 (21 Aug., 1945) *TOP* vol. 6 #48, 110.

smuggled into India from the Burma front—both to train Congress volunteers and as a Congress striking force; and also possibly to tamper with the Indian Army.”<sup>71</sup>

Finally, there was the issue of justice or, when this justification for trials was later played down, “abstract justice.” It was within this discussion, which initially emerged almost as an afterthought, that the issue of violence and brutality was raised. Injustice here included both the sense of betrayal—framed primarily as betrayal of fellow Indian soldiers rather than the British Empire, and injustice in the form of illegitimate violence. Was it not a sheer insult to the bravery of the Indian Army who served loyally in battle, the question was posed, if those who cast off their allegiance and fought for the enemy were allowed to go free? And what of the Indian POW who, despite the prospect of beatings, hard labor, and starvation, resisted the call to join the INA and remained true?

### *Justice and the Loyal Indian Prisoner of War*

Justifications for harsh punishment that rested upon the inherent injustice of clemency would eventually yield the most powerful rhetoric, even if it was only gradually adopted. As with the claim that condoning disloyalty in the Indian Army would threaten the security of a future independent India, the cause of justice for the indignant POW had the virtue of transforming the INA trials from a British Imperial cause into an Indian one. As seen above, reports of anger and bitterness towards the INA were included in intelligence briefings at least by June, 1945 but it appears to have been discussed as justification for legal action only somewhat later. In October Wavell predicted that

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<sup>71</sup> “Field Marshall Viscount Wavell to Lord Pethick-Lawrence” L/PO/10/22 (9 Oct., 1945) *TOP* vol. 6 #135, 319. Whether or not the prospect of an armed insurgency by former INA and Indian legionaries was a realistic threat in India, the role later played by former members of the Japanese-trained Burma National Army forces as leverage by Aung San in Burma negotiations, as we shall see in Chapter Four suggests that the fears were not unreasonable. Likewise, Japanese-trained PETA volunteers would go on to play a prominent role in the independence struggle in the Dutch East Indies.



Congress attempts to take up the defense of the INA cause would backfire when India's soldiers returned home.

I saw two battalions of Gurkhas at Dehra Dun, who have returned from Prisoners of War camps in Malaya. They were far more bitter about the INA than about the Japs, and said that the worst of their ill-treatment came from the former. Their one request to me was to see that stern justice was dealt out to the INA. The Commander-in-Chief tells me that this feeling is universal among the returned POW...<sup>72</sup>

At a National Defense Council meeting held over the course of the following three days, an Indian officer who had survived the prisoner of war camps was invited to speak about his experiences. His statement focused mostly upon the INA and offered a “moving account of the sufferings the prisoners of war had undergone at the hands of their own countrymen.” The officer claimed that, upon their return, the loyal survivors were “shocked” to find that the INA were “acclaimed as the national heroes” while the POWs were neglected.<sup>73</sup>

The cause of the loyal POW soon made it into the planning reports on the upcoming trials. When an estimate was produced, as we shall see below, that 50 death sentences would be confirmed for court-martialed INA Blacks, the otherwise matter-of-fact style of the report justified the death sentences in emotive terms that would soon become widespread, “To deal leniently with such cases would cause great offense to the Indian Army and in particular to those POWs who remained steadfastly loyal in spite of all blandishments, propaganda, hardship and brutality to which they were subject.”<sup>74</sup>

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<sup>72</sup> “Field Marshall Viscount Wavell to Lord Pethick-Lawrence” L/PO/10/22 (1 Oct., 1945) *TOP* vol. 6 #127, 305-6

<sup>73</sup> “Field Marshall Viscount Wavell to Lord Pethick-Lawrence” #135, 322.

<sup>74</sup> “Cabinet: India and Burma Committee. Paper I.B. (45) 16” L/WS/1/1577: ff 142-7 (20 Oct., 1945) #154, 371.

The loyal POW did not only appeal his cause to the British government, however. Captain Hari Badhwar, a returned POW from the 3rd Cavalry who had surrendered in Singapore, reported on the “true story of the INA” and their “brutal treatment” of fellow POWs directly to the lawyer and Congress legislator Asaf Ali.<sup>75</sup> Ali, who later served as India’s first ambassador to the US, was a member of the INA Defense Committee and reportedly spoke to Badhwar for over three hours. The conversation, as it was reported by Badhwar to Governor-General Wavell’s secretary Evan Jenkins and then summarized in a letter by Jenkins, has been seen as evidence for the raw political motivations behind Congress support for the INA cause.<sup>76</sup> In statements remarkable for one of the leading lawyers organizing the INA defense, Ali allegedly admitted to Badhwar that, if Congress had been in power, they would have cashiered the INA from the army and put some of them on trial—but only if the British government refrained from doing so themselves. Even admitting the brutality of some of the INA, however, Congress could not now withdraw its support since, “they would lose much ground in the country.”<sup>77</sup> It would not have come as a surprise to the British administration that Congress was attempting to maximize the political utility of the INA issue, but more revealing was the sense in Ali’s reported responses to Badhwar, that national support for the issue was now something Congress was trapped into acting upon. Nehru too admitted that he found the national response to the INA cause “astonishing” and suggested that his inability to predict the response made him feel “out of date.”<sup>78</sup>

The experience of Badhwar was not that of a typical soldier in the Indian Army. He had attended Christ’s College, Cambridge and the University of Grenoble in France before joining the

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<sup>75</sup> “Sir E. Jenkins to Mr. Turnbull” L/WS/1/1577: ff 111-12 (23 Oct., 1945) *TOP* vol. 6, #160, 386-7.

<sup>76</sup> Bayly and Harper *Forgotten Wars*, 80.

<sup>77</sup> “Sir E. Jenkins to Mr. Turnbull” #160, 387.

<sup>78</sup> “Pandit Nehru to Sir S. Cripps” L/P&J/10/59: ff 42-4 (27 Jan., 1946) *TOP* vol. 6, #384, 856.

Indian Army. His postwar fate was also far from one of neglect. Captain Badhwar eventually rose to the rank of Major-General.<sup>79</sup> During the war, he was the “right hand man” of “Drag” Dhargalkar. Dhargalkar was a widely respected Indian officer, a leader among loyalist POWs as well as a future general in post-independence India.<sup>80</sup> As leading opponents to INA recruitment in the camps, both Dhargalkar and Badhwar were at one point separated from the other prisoners and suspended in a specially prepared underground cage in Bangkok for 88 days, where they suffered further degradation at the hands of their Japanese captors.<sup>81</sup> When Dhargalkar, who was a prosecution witness at the first Red Fort trial against the INA, attempted to describe the ordeal, his testimony was cut short when the defense understandably protested that the incident had nothing to do with acts committed by the INA.<sup>82</sup> Robbed of this opportunity, Dhargalkar’s could say nothing of INA acts that affected him personally and admitted he was not even asked to perform labor. Instead, he offered only passing mention of having witnessed the beating of prisoners. Only once was he able to name a perpetrator of beatings of other prisoners, Fateh Khan, and Khan was not among those in the dock for the first trial.<sup>83</sup>

Badhwar became the most prominent representative of loyal Indian POWs in the relatively muted British propaganda efforts to justify prosecutions of the INA. The 1 November issue of *Indian Information*, produced by the Bureau of Public Information included a feature on Badhwar under the

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<sup>79</sup> Pradeep Barua. *Gentlemen of the Raj: The Indian Army Officer Corps, 1817-1949*. (Greenwood Publishing Group, 2003), 116

<sup>80</sup> Denis Russell-Roberts. *Spotlight on Singapore*. (Douglas, Isle of Man: Times Press, 1965), 265.

<sup>81</sup> Ibid.

<sup>82</sup> Fay *Forgotten Army*, 102.

<sup>83</sup> India (Dominion). Army. Courts-martial. *Two Historic Trials in Red Fort: An Authentic Account of the Trial by a General Court Martial of Captain Shah Nawaz Khan, Captain P. K. Sahgal and Lt. G. S. Dhillon; and the Trial by a European Military Commission of Emperor Bahadur Shah*. (Moti Ram, 1946), 48-9. Khan was among the few eventually tried, but not at the key first trial.

title “Refused to Join the I.N.A.” Describing Badhwar’s ordeal together with Dhargalkar in Bangkok it concluded that “only a man of exceptional courage and physique” could have resisted the temptation to give in to the temptation to betray the Indian Army and join the INA. After he was returned to the camp, he showed an almost stereotypical English stoicism when he was reported to have told an inquiring old friend merely that he had, “rather a rough time.”<sup>84</sup> The article made very little attempt to link the Badhwar case more strongly to the upcoming INA trials, however, and not much appears to have been done to mount a strong defense of the trials in the name of figures such as him.

Governor-General Wavell records in his journal that, when he met with the acting-editor of the *Times of India*, Ivor S. Jehu on the eve of the first INA trial on 3 November, Jehu warned the Governor that, “Our propaganda and publicity over the I.N.A. was fatally slow and ineffective...we have given Congress a weapon which they have been not slow to use, and very unscrupulously.”<sup>85</sup> Though it was not sufficient to diminish widespread sympathy for the accused, the emphasis on the wartime plight of the loyal Indian POW did have the double virtue of both justifying the release of the vast proportion of the INA members who might have lacked the “exceptional courage” of Badhwar, while honoring those captured Indians who did stay suffer in the camps.

There was another way the British government could achieve this: through war crimes trials for Japanese soldiers who were primarily responsible for the suffering of Indian POWs. The very first military war crimes tribunal held by the British after the war dealt exclusively with charges involving the abuse of Indian soldiers.<sup>86</sup> The accused Captain Gozawa Sadaichi and nine other Japanese

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<sup>84</sup> India. Bureau of Public Information. *Indian Information* v. 17 no. 171 (1 Nov. 1, 1945), 527.

<sup>85</sup> Penderel Moon ed. *Wavell: The Viceroy's Journal* (London: Oxford University Press, 1973) (3 Nov., 1945), 180-181.

<sup>86</sup> A detailed analysis of the legal elements of this trial is found in Arujunan Narayanan “Second World War Japanese Atrocities and British Minor War Crimes Trials: The Issue of Fair Trial in Four Selected British Minor War Crimes Trials in Malaya and Singapore in 1946-1947” Vol. 1 (PhD Dissertation, University of Wales, Aberystwyth, 2003).

soldiers were arrested on 15 August, 1945 by U.S. Forces in Palau. They were charged with the physical abuse and mistreatment of Indian prisoners, the illegal beheading of an Indian prisoner in April, 1945, and for responsibility in the death of eight other Indian prisoners as a result of flogging or other abuse.

In his retrospective account of this war crimes trial, Colin Sleeman, the defense lawyer for the accused Japanese soldiers, alleged that the British Army's decision to focus the first trial on Japanese war criminals whose victims were Indian was anything but a coincidence. It was, he claimed, designed to emphasize the sacrifices of Indian POWs as the INA trials approached in India. By holding trials in which Indians were the victims, the British Army sought to "demonstrate once more the absolute equality before the law of the rights of all Imperial subjects, irrespective of nationality, race or colour."<sup>87</sup> This first British war crimes trial helped set precedents for all British trials to follow, especially with regard to three important issues: the responsibility of subordinate officers who had been ordered to carry out atrocities, a ruling on the command responsibility of higher officers in cases where they did not explicitly order the crimes, and importantly, a confirmation that Japanese soldiers were, without Japan having ratified it, still bound to the terms of the 1929 Geneva convention as customary international law.<sup>88</sup>

If Sleeman was right in identifying the trial's main goal, then it failed completely. This trial and its outcome came too late to have any bearing on events in India. By the time the accused had been transferred to Singapore in preparation for trial in mid-November, the INA trials were already underway in India, with national support for the accused well established. Nakamura Kaniyuki, the

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<sup>87</sup> Colin Sleeman, ed., *Trial of Gozawa Sadaichi and Nine Others* (London: Hodge, 1948), xliii.

<sup>88</sup> 「英シンガポール裁判第1号とインド国民軍裁判」 [The First English Singapore Trial and The First Indian Citizen Military Trial] in Yoshio Chaen 茶園義男 ed., *BC級戦犯英軍裁判資料* [Materials on the British Military Trials of BC Class War Criminals] (Tōkyō: Fuji Shuppan, 1988) vol. 2, 133.

only soldier in the case sentenced to execution, was shot in March, 1946, and the others were all given prison sentences. By this point, the moment had long passed for any real chance for coverage of the case in India to have any real impact.

### *Narrowing the Scope of the Trials*

In the fall of 1945, the British colonial government was faced with varying estimates of hundreds or thousands of potential prosecutions and a variety of potential justifications for the scale and severity of planned proceedings against the INA. It was not enough to create a sympathetic image of the loyal Indian POW or recognize the suffering of these prisoners under Japanese or INA camp guards. Preparations for actual trials, criminal investigations of the alleged atrocities, and propaganda to attract sympathetic public had all barely begun.

In a letter to the Secretary of State for India Pethick-Lawrence on 21 August Governor-General Wavell suggested issuing a communiqué within the week. He described in great detail the practical and political difficulties in carrying out large numbers of proceedings, including the need for 250 officers to sit on courts-martial for a year and process some 2,000 case files.<sup>89</sup> The governor suggested that the government announce a “middle course” which would “punish only the leaders” and offer others clemency. For Wavell, it was still the treason of INA’s leaders, and the desire to make an example of the most prominent turncoats which was foremost on his mind. Nowhere in his detailed overview of the issue as it stood in August was there any mention of violent crimes.

The communiqué announcing INA trial policy was drafted by War Department secretary Philip Mason and issued the following week, on 27 August. It did offer clemency to the rank and file, but the scope was tweaked to emphasize violent crimes: “there remains a number—who are alleged to

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<sup>89</sup> “Governor-General (War Department) to Secretary of State Telegram” L/PO/10/25 (21 August, 1945) *TOP* vol. 6, #48 110.

have killed their former comrades or to have been responsible for the capture or torture of Allied soldiers and some leaders, who appear to have consciously embraced the Japanese or German cause...”<sup>90</sup> No clue was offered as to the number of INA personnel that would eventually be tried. In fact, after the issuing of the communiqué, little progress seemed to have been made on the actual logistics and limitations of scope of the trials for almost two months. Then, on October 20 only two weeks before the first trial would open, a paper was presented to the India and Burma committee of the cabinet in London with a new updated assessment of who would be prosecuted.

Of 2,565 INA blacks and around 3,000 Indian Legion blacks (these “hardened traitors” were all “provisionally classified black”) those who were to be targeted for court-martial were divided into ten categories:

- A. 59 Those who had been officers in the Indian Army
- B. 29 Viceroy’s commissioned officers (VCOs) who became officers in the INA
- C. 14 VCOs who joined the Indian Legion in Germany
- D. 40 Deserters who joined the INA
- E. 12 other ranked soldiers (IORs) who became officers in the Indian Legion
- F. 60 INA soldiers who were guilty of causing the death of a British or Allied subject
- G. 92 INA soldiers who were guilty of brutal conduct towards their fellow INA or Indian Legion members
- H. 53 INA soldiers who took part in capture or handing over of Allied personnel to the enemy.
- I. 240 IORs who became officers in the INA and who took a leading part in the battle against the Allies
- J. 205 Indian “Fujiwara Volunteers” who were the earliest to join the Indian National Army<sup>91</sup>

Commander-in-Chief Auchinleck ordered that only trials for those in categories D and F to J go forward, while other categories be postponed. Only two of these six categories (F and G) might be

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<sup>90</sup> Quoted in *INA Trial and the Raj* 49.

<sup>91</sup> “Treatment of Indian and Burman Renegades and Collaborators with the Enemy: Memorandum by the Secretary of State for India and Burma” Annexure I L/WS/1/1577: ff 142-7 TOP vol. 6 #154 370.

described as war crimes, but they comprised well over half of the accused. Of these initial cases, it was estimated that guilty sentences would be found in 60 cases of causing death, 92 cases of brutal treatment, 53 cases of handing over Allied personnel to the enemy, and 40 VCOs (Viceroy's Commissioned Officers, Indian officers) or IORs (Indian Other Ranks, likely including non-commissioned officers) who deserted and joined the INA.<sup>92</sup> As a result of guilty sentences, it was predicted that 50 death sentences would be handed down and carried out.

While these sober estimates were being updated, troubling signs of serious opposition from Indian nationalists emerged. Nehru immediately condemned the August communiqué.<sup>93</sup> Intelligence reports warned that most political rallies in the Central Provinces included demands for an end to action against the INA.<sup>94</sup> In a letter to Wavell's secretary Evan M. Jenkins, Mahatma Gandhi wrote that, while he had "nothing in common with any defense by force of arms," he was not blind to the "valor and patriotism" of armed men and that since India "adores these men" it would be a misuse of Government power if it proceeded with trials against them, "in the teeth of universal Indian opposition."<sup>95</sup>

The first trials against the INA were scheduled finally for 5 November. In the week leading up to the opening, however, Governor-General Wavell and other colonial officials were increasingly concerned with what they saw as, "the violent tone of the Congress politicians and the nationalist Press." Writing to Pethick-Lawrence on 29 October, the Governor-General warned of "stormy weather ahead" and the potential of a violent mass movement after the upcoming legislative

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<sup>92</sup> Ibid., 371.

<sup>93</sup> Singh, *INA Trial and the Raj*, 49.

<sup>94</sup> Ibid., 45.

<sup>95</sup> "Letter to E. M. Jenkins" (Oct., 29, 1945) L/P&J/7/8460: f 9 TOP vol. 6, #175, 418.



elections.<sup>96</sup> By 2 November, it was already decided to further reduce the scope of trials. While the original plan was to carry out the trials over the course of a full year, the entire process would now be condensed into a period of six months. Instead of postponing some categories, courts-martial in categories A, B, C and E were to be completely dropped, and deserters in category D dealt with without any mention of their INA membership. Those in other categories would only be court-martialed if they could be convicted of at least one charge other than “waging war against the King.”<sup>97</sup> Governor-General Wavell reported that the Commander-in-Chief Auchinleck now estimated 125 trials, 45 death sentences, and only 20 executions actually being carried out.

Meeting with Nehru for an hour the following day, Wavell’s concerns were only amplified. As he records their conversation, Nehru, “practically admitted that he was preaching violence.”<sup>98</sup> Faced with increasing disorder, violent threats to colonial rule, and growing communal violence, Wavell tied his concerns to the looming trials,

We shall before long be faced with the issue of another violent suppression of Congress, with weaker and rather demoralised forces perhaps, if their intimidation of officials and police continues unchecked and they succeed in dividing the [Indian Army] over the I.N.A. Trials; or of capitulation to them.<sup>99</sup>

The Governor of Sind province, Hugh Dow, wrote to Wavell the same day, reporting that, “agitation to stop the I.N.A. trials is clearly being centrally directed and is becoming almost hysterical.” However, Dow interpreted this more as a sign of desperate action, rather than strength and speculated that the rise in agitation might actually be connected to a fear on the part of Congress

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<sup>96</sup> “Field Marshall Viscount Wavell to Lord Pethick-Lawrence” (29 October, 1945) L/PO/10/22 *TOP* vol. 6, #177, 420.

<sup>97</sup> “Field Marshall Viscount Wavell to Lord Pethick-Lawrence” (2 November, 1945) L/WS/1/1577: ff 96-100 *TOP* vol. 6, #185, 432.

<sup>98</sup> Wavell, *Viceroy’s Journal* (November 3, 1945), 180.

<sup>99</sup> *Ibid.*

that heinous crimes might be exposed in the trials, rather than simply treason.<sup>100</sup> The angry response to the trials would only grow much worse in the coming weeks.

### *A First-Class Blunder*

The first trial against the INA opened on 5 November, 1945 against Shah Nawaz Khan, Prem Kumar Sahgal, and Gurbaksh Singh Dhillon. The trial of these three well-liked officers jumped ahead of a treason and lethal flogging case initially scheduled to go first, involving the less sympathetic figure of one Burhan-ud-din. An inconvenient statute of limitations needed to be lifted first and Burhan-ud-din's trial was postponed. Khan, Sahgal and Dhillon were all accused of waging war against the King in violation of Section 121 of the Penal Code. Dhillon was further charged with murder in the deaths of fellow INA soldiers Hari Singh, Duli Chand, Daryao Singh, and Dharam Singh.<sup>101</sup> Prem Kumar Sahgal was accused of abetment in the murders of Hari Singh, Duli Chand, and Daryao Singh. Shah Nawaz Khan was charged with abetment in the death of another INA soldier, Mohammad Hussain. The three men were defended by a powerful defense team, including none other than Jawaharlal Nehru himself, leading defense counsel Bhulabhai J. Desai, the deputy Congress leader Asaf Ali, a one-time minister of justice, 10 other lawyers and no less than 3 ex-judges.

This first INA trial has been well-studied but it is worth reviewing the closing arguments and the outcomes of the trial. On 31 December, the three accused were found guilty of waging war against the King, sentenced to transportation for life, cashiering, and forfeiture of arrears of pay. In

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<sup>100</sup> "Sir H. Dow (Sind) to Field Marshall Viscount Wavell (Extract)" L/P&J/5/261 f27 (3 November, 1945) *TOP* vol. 6, #187, 437.

<sup>101</sup> Dhillon was also, confusingly, both charged with murder and abetment to murder of Dharam Singh. See the charge sheet and transcripts of the first trial in *Two Historic Trials in Red Fort*, 2.

announcing his confirmation of the sentence on 3 January the Commander-in-Chief Auchinleck quashed the life sentence and retained only the cashiering and forfeiture of pay. Shiva Rao, a journalist and later a Congress legislator was among the members of the press allowed to attend the trial and offered one the most concise appraisals of its proceedings. Respected as a moderate and reliable correspondent, a letter he wrote about what he witnessed was passed on to the Cabinet in London, "I am more than ever before convinced that this trial is a first-class blunder."<sup>102</sup>

It was a blunder for several reasons. The choice of the accused was the first disaster. The murders that decorated the treason charges made them, as Peter Ward Fay has memorably put it, "turncoats who happened to be brutes, not...brutes who happened to be turncoats."<sup>103</sup> Yet these crimes of brutality, so serious sounding in the charge sheet, turned out to consist of the execution of 5 suspected INA deserters. Where were the tales of torture and brutality that were promised? Wavell was not at all impressed by the evidence for the murders, which "has not been such as to horrify the normal Indian in any way."<sup>104</sup> Had the accused carried out these executions out under British orders, they would be acts of duty rather than murder. To make matters worse, the evidence for these executions was so confused that Desai and the rest of the defense team made a mockery of it, even to the point of denying that the murdered men had ever been executed at all. All the murder charges were dismissed and only a single charge of abetment to murder in the case of Shah Nawaz Khan was sustained. Even in Khan's case, no separate sentence for the charge was issued above that given to him on the count of treason.<sup>105</sup>

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<sup>102</sup> "Cabinet Paper C.P. (45) 313" L/P&J/8/525 f 293 (28 November, 1945) *TOP* vol 6., #248, 564.

<sup>103</sup> Fay, *Forgotten Army*, 476.

<sup>104</sup> "Field Marshall Viscount Wavell to Lord Pethick-Lawrence" L/PO/10/22 (27 Nov., 1945) *TOP* vol. 6, #246

<sup>105</sup> Auchinleck admitted later that this was confusing to those used to sentences in civilians courts, but emphasized this was normal in the case of courtmartial with a more serious charge having a heavier sentence. "General Auchinleck to Field Marshal Viscount Wavell" Wavell Papers (13 Feb, 1946) *TOP* vol. 6, #425, 940.

The trial became, on the one hand, an experiment chamber for arguments about international law and rights of belligerency, and on the other, an opportunity for the defense to defend the honor of the INA and refute the British arguments that it was filled with cowards and press-ganged POWs. With the murder charges treated as a derivative of the primary charge of waging war against the King, well over three quarters of Desai's 172 page-long closing address to the court was dedicated to reviewing grander themes rather than the specifics of the violent acts designed to single out the suspects for trial. In the case of defending the honor of the INA, as the Judge Advocate General later noted in his review of the legal issues, much of the court's time was wasted by both prosecution and defense in establishing a point of likely complete irrelevance: the degree to which the INA consisted of coerced recruits or patriotic volunteers.

On the role of international law in determining the validity of treason charges, the Congress defense lawyers embraced two approaches. They argued that INA volunteers were not bound by their oaths of allegiance to the Indian Army because Britain failed to protect them following the surrender in Singapore. Indian soldiers were, unlike other Western soldiers, separated and "handed over" to the Japanese. As we shall see in Chapter Five, an almost identical argument was later used by Philippine lawyer and leading wartime collaborator Claro Recto, when he argued that United States sovereignty over the Philippines was suspended by virtue of its having abandoned its duties to protect its people.

A second approach taken in the INA trial was to argue, again using precedents from customary international law, that the Provisional Government of Free India had attained a degree of legitimacy and international recognition over which the original state could not "assert the provisions of his own criminal law as the only legally relevant element in the situation."<sup>106</sup> The key historic precedent invoked here was the British treatment of allied Czechoslovak and Polish armies as

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<sup>106</sup> *Two Historic Trials*, 275.

co-belligerents in World War I, before their respective states came to unambiguously rule over their own territory. To prove the legitimacy of the Provisional Government of India, the court found itself entertaining everything from descriptions of Free India's control of the school system in the Japanese-occupied Nicobar islands to philatelist reports on the issuing of a stamp by the new provisional government.

*Abstract Justice and Expediency*

The opening trial gripped the attention of the entire colony. Yet, the violence allegedly committed by the accused that was to guide the selection of those tried offered nothing of the brutality and atrocities that might mitigate the powerful nationalist response to the treason charges. "INA day" was declared on the opening day of the trial, on 5 November. It would be the first of many days of that name in communities across India as rallies in support of the accused were organized, and parts of Lahore and other areas of Punjab almost shut down completely in protest.

On 6 November, Wavell sent a memorandum to Pethick-Lawrence predicting a revolution following the elections in the spring with the INA as the "spear-head of their revolt."<sup>107</sup> In November Wavell received reports from several concerned provincial governors. A report from the Governor of the United Provinces, Maurice Hallett, claimed that revolutionary brigades had been formed at Benares and Allahabad, with the latter trained by an INA veteran.<sup>108</sup> In Benares, an "agitator" threatened revenge on European children if the INA was not left alone. The Governor of the Central Provinces, Henry Twynam, also passed on threats of revenge in the event of INA executions.

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<sup>107</sup> "Field Marshal Viscount Wavell to Lord Pethick-Lawrence" L/P&J/8/525 ff 404-7 (6 November, 1945) TOP vol. 6, #194, 452.

<sup>108</sup> "Sir M. Hallett (United Provinces) to Field Marshall Viscount Wavell" Wavell Papers (19 Nov., 1945) TOP vol. 6, #218, 507.

Twynam also described a tense political atmosphere in the provinces that reminded him of the rebellion of 1857, where troops once thought loyal could suddenly support the mutineers.<sup>109</sup> Finally, the Governor of the North-West frontier province, George Cunningham came straight to the point with his own frank recommendation: Auchinleck ought to simply wipe the whole slate clean and take no further action against the INA.

The colony was bleeding support with each day the trials continued. “The thing is daily becoming more and more purely Indian *versus* British and less and less ill-disposed Indians *versus* British-*cum*-well-disposed Indians.”<sup>110</sup> The predicted violence broke out 21 November, beginning with a demonstration in opposition to the INA trials in Calcutta. Protests and violent riots continued there for nearly a week. Some 33 died in the violence that grew out of the demonstrations, including one American driver who burned to death in his vehicle. Almost 200 police, soldiers and fire brigade members (including 37 Americans) as well as 200 civilians were also injured.<sup>111</sup> Violent protests spread to over half a dozen cities throughout India.

It was not long before colonial officials decided to revisit their ever-shrinking list of trial candidates once more. In late November Wavell and Auchinleck both caved to the intense pressure to reevaluate their approach to future trials. Auchinleck in particular was deeply concerned with the

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<sup>109</sup> “Sir H. Twynam (Central Provinces and Berar) to Field Marshall Viscount Wavell” L/P&J/5/194 ff 28-9 (26 Nov., 1945) TOP vol. 6, #239, 542.

<sup>110</sup> “Sir G. Cunningham (North-West Frontier Province) to Field Marshall Viscount Wavell” (27 Nov, 1945) Wavell Papers TOP vol. 6, #243, 546. A more detailed report from the Intelligence Bureau on 20 November offered a long list of concerns about widespread action in opposition to the INA trials from around the country. While thankful that no violence had yet been taken against the Indian Army or against Europeans, it warned of the spread of threatening posters and expressed concern at the wide breadth of support, cutting across communal barriers and not limited to typical opponents of the government. “Government of India, Home Department to the Secretary, Political Department, India Office” L/P&J(S)/File 2188 of 1945: ff 5-11 (20 Nov., 1945) TOP vol. 6, #222, 514.

<sup>111</sup> “Field Marshall Viscount Wavell to H.M. George VI (Extract)” Wavell Papers (31 Dec., 1945) TOP vol. 6, #322, 713. *INA Trial and the Raj*, 79

impact of broader Indian opinion on the Indian Army as a whole.<sup>112</sup> The Commander-in-Chief proposed a new policy. The charge of waging war against the King was to be dropped in all trials beyond those proposed in a newly compiled list. Auchinleck conceded this might seem like condoning disloyalty, but “The principal that treason cannot be condoned will have been vindicated by the continuance of the present trials and the addition of the charge of waging war in the further trials proposed.”<sup>113</sup> Only a few cases involving brutality would continue. Death sentences would be commuted in cases where a soldier believed he was carrying out his duty. Whereas this commutation might seem natural in retrospect, it should not be considered a trivial move for an officer of the likes of Auchinleck. At least from 1942 he was an ardent supporter of *reintroducing* the death penalty within the British army for cowardice and desertion of soldiers regardless of their origins, let alone deserters who subsequently fought on the side of the enemy or were guilty of brutality.<sup>114</sup> He repeatedly pleaded that there be “no hesitation in resorting to extreme measures” in order to establish discipline in this regard.<sup>115</sup>

During the course of a new narrowing of focus, the image of the indignant POW and an Indian Army calling for vengeance vanished. As Auchinleck reported, “There is evidence to show that there is no general resentment in the Indian Army against the I.N.A.”<sup>116</sup> On the contrary,

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<sup>112</sup> “He is now definitely worried about them,” wrote Wavell in his journal, “and the the possible effect of them and Indonesia on the loyalty of the Indian Army.” Wavell: The Viceroy’s Journal (Nov 24, 1945), 187. For Governor Wavell 24 November was a day filled with discussions about the INA. Delivering some papers in the morning, his private secretary George Abell broached the topic of the INA trials and expressed his concern about their impact. Later Sir Jwala Prasad Srivastava, a member of the Governor’s Executive Council arrived and asked Wavell to call off all the INA trials.

<sup>113</sup> “General Auchinleck to Field Marshall Viscount Wavell” Wavell Papers (24 Nov., 1945) *TOP* vol. 6, #233, 532.

<sup>114</sup> David French, “Discipline and the Death Penalty in the British Army in the War Against Germany During the Second World War,” *Journal of Contemporary History* 33, no. 4 (October 1, 1998), 539-40.

<sup>115</sup> “General Auchinleck to Field Marshall Viscount Wavell,” 532.

<sup>116</sup> *Ibid.*

“general opinion in the Army” supported leniency, he argued. Auchinleck’s new list of those to be tried for their treason was appended to a draft communiqué about the new policy. It contained only four additional names beyond the three already standing trial at the Red Fort: Burhan-ud-Din, Shingara Singh, Fateh Khan, and Abdul Rashid.

Wavell disliked the idea of backing down as well as the idea of issuing a new communiqué. “I think the harm is done now and that we should stick to our guns,” he wrote in his journal, but he eventually accepted Auchinleck’s proposals and the communiqué was issued on 1 December.<sup>117</sup> Justifying the new policy in a telegram to Pethick-Lawrence, Wavell wrote, “we have reached the conclusion that abstract justice must to some extent give way to expediency.”<sup>118</sup> He now estimated that only 20-50 INA members would now reach trial.

The INA-related violence died down for a time thereafter, though there were more large-scale rallies following the 3 January confirmation of sentencing and release of the three first INA officers to be tried. The three cashiered officers toured the country as national heroes as the trials of Burhan-ud-Din, Shingara Singh, Fateh Khan and Abdul Rashid continued. Any of these four would have been better candidates for a first trial emphasizing crimes of violence, though none of them were charged with the scale of brutality against civilians that Indian renegades and other military collaborators of Japan would be accused of elsewhere in the aftermath of the war. Burhan-ud-Din was charged with flogging an INA deserter to death. He was convicted of waging war against the King and of causing grievous bodily harm and given a 7-year sentence at the end of February. Singhara Singh and Fateh Khan were convicted together in mid-March and sentenced to 14 years. They were charged

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<sup>117</sup> *Wavell: The Viceroy’s Journal* (Nov 28, 1945), 190.

<sup>118</sup> “Governor-General (War Department) to Secretary of State” L/PO/10/25 (30 Nov, 1945) *TOP* vol 6., #252, 582.



with three murders, two beatings and for waging war against the King.<sup>119</sup> The beatings and murders were of non-INA Indian POWs and it was alleged they targeted those who refused to join the INA.<sup>120</sup>

The case of Abdul Rashid was unusual for several reasons. He rejected the Congress defense team and sought counsel from Muslim League lawyers. Accused of beating loyal Indian Army soldiers and of waging war against the King, Rashid was the only one of the accused who denied that he had joined the INA for nationalist reasons but insisted he did it to protect other Muslims from Hindu dominance within the organization.<sup>121</sup> When Rashid was sentenced to 7 years on 5 February, riots again broke out but in some areas showed a distinctly more communal character.<sup>122</sup>

Very little is known about subsequent INA cases which dropped the charge of waging war against the King, but alleged various acts of brutality or murder. These crimes included numerous acts of violence against Indian Army POWs—the very kinds of cases that would have best addressed the calls for justice from loyal POWs. The near complete obscurity of these later trials, despite the huge publicity over the INA trials in general suggests what an alternative approach to charges of INA brutality that avoided treason charges from the start might have looked like. The final statements of a few of these other INA members who faced trial in the spring of 1946 are collected in a small volume published in May, 1946, *The I.N.A. Speaks*. These include Puran Singh, sentenced to seven years in late February for the shooting of POWs in an incident connected to Fateh Khan's case. A Jaswant Singh was sentenced to three years for flogging prisoners in early March, 1946.

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<sup>119</sup> L. C. Green "The Indian National Army Trials" *Modern Law Review* 11 (1948), 62.

<sup>120</sup> Singh gives his side of the story, in which he claims he was acting in self-defense in *I.N.A. Speaks*, 82. Fateh Khan gives his version of events as well in *ibid.*, 98.

<sup>121</sup> *Ibid.*, 61.

<sup>122</sup> *Ibid.* For details of sentencing see "Capt. Rashid Sentenced to Seven Years" *The Hindustani Times* 1946 (Feb 5), 1

A one year sentence was given to one Nimbu, who did not deny accusations that he flogged Indian POWs in the Bidadari Detention Camp, “The story of flogging which is alleged in the seven charges against me might or might not be correct as I have flogged under orders a number of persons.”<sup>123</sup> A Zaman Khan was charged with cruelty and with using physical coercion to get Indian Army prisoners to join the INA but was acquitted in late March. A short 2 May announcement declared the end of prosecutions and the release of any INA personnel remaining in custody who had not yet been convicted. All those charged with crimes as part of the INA trials were released, at latest, on August 15, 1947 as part of a general amnesty, thanks to an agreement brokered between Supreme Allied Commander of the South East Asia Command Louis Mountbatton and Nehru.<sup>124</sup>

The INA trials came at a great cost for the Raj. For Congress, the trials were a golden opportunity. Maybritt Jill Alpes has argued that Congress was able to effectively appropriate the trials, exclude Muslim League participation in both the defense and in various political activities associated with the anti-trial movement, and even bolster its own anti-colonial standing in relation to the Communist Party of India, which had strongly opposed the INA during the war.<sup>125</sup> The powerful message of inter-communal cooperation symbolized by an INA which sought to overcome these divisions during the war, and the spectacle of Muslim, Sikh, and Hindus all going to trial for what was widely seen as crimes of patriotism was only disturbed once, with the trial of Abdul Rashid. Congress was able to effectively put the colonial administration on the defensive while at the same time work towards co-opting a political and military force which had been nurtured under the

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<sup>123</sup> *I.N.A. Speaks*, 139.

<sup>124</sup> On the negotiations of this final stage see Maybritt Jill Alpes “The Congress and the INA Trials, 1945-50: A Contest over the Perception of ‘Nationalist’ Politics” *Studies in History* 23:1 (2007), 153-155.

<sup>125</sup> See Alpes, “The Congress and the INA Trials” *Ibid.*

leadership of a political rival for power.<sup>126</sup> For the British administration, the cost in terms of instability was already significant from the perspective of the November violence in Calcutta and the early February violence following the sentencing of Abdul Rashid. It may also have played a significant role in sparking the mutiny of the Royal Indian Navy later that month.

Determining the impact of the INA and the INA trials on the Indian Army was a more complicated matter. We have seen already the concerned reports of the effects of the INA issue on military morale. Early in 1945 correspondence of the colonial leadership implied that officers and soldiers within the Indian army had demanded harsh punishment. This was gradually replaced with anecdotal evidence that the army was more inclined toward leniency. On 13 February, 1946 Auchinleck distributed a post-mortem to all army commanders on the question of what the impact of the first INA trial had actually been on the Indian Army.<sup>127</sup> In preparation, he studied a large number of reports from unit commanders and other sources. Auchinleck concluded that the impact on the general public in India could be summed up as “pleasure and intense relief” at the commutation of sentences on Shah Nawaz, Dhillon and Sahgal in the first trial. When it came to Indian officers in the Indian Army, Auchinleck found that the “vast majority” were “glad and relieved” that the commutation avoided inevitable chaos. Only “a few recovered prisoners of war” reacted differently. When it came to the rank and file of the Indian Army, he found that there was in fact very little interest in the trials, with the exception of technical units, clerks, and the like. Again, those who had suffered at the hands of the former INA in the camps might “feel bitterness” at the leniency shown but these were estimated to be few in number.

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<sup>126</sup> INA veterans would later feel betrayed by Congress when they were denied benefits and the ability to enroll again in the Indian Army after decolonization up to 1972. For more on their postwar campaigns for recognition, see “Betrayal of Faith” in S. S. Yadava ed. *Forgotten Warriors of Indian War of Independence 1941-1946* vol. 1, 76-108.

<sup>127</sup> “General Auchinleck to Field Marshal Viscount Wavell” Wavell Papers (13 Feb, 1946) *TOP* vol. 6, #425, 939-41.

Auchinleck excluded any survey of the opinions of the Indian Air Force or Navy, but was confident that everything he said also applied to them since, after all, they were better educated and politically minded. Unfortunately, he couldn't have been more wrong. Within a week of writing the report, elements of the Royal Indian Navy mutined in Bombay, eventually involving the personnel of over seventy ships. Whatever the driving causes of the mutiny might have been, its participants cited the example of the INA as one of their main inspirations. They sang INA songs during the mutiny, and included the release of all detained INA members as one of the top political demands of the rebellion.<sup>128</sup> Auchinleck did make one exception to his otherwise rosy assessment. The impact on British officers of the Indian Army was said to have been "bad, and has led to public criticism which has not been in accordance with the traditional loyalty I am entitled to expect."<sup>129</sup> Apparently without irony, he blamed this on the fact these officers were "not always very perceptive or imaginative" and thus not able to grasp the delicate political considerations of the trials. Resentful voices such as these, that had been enthusiastically embraced to justify larger-scale trials early on were now being chided as lacking perception and imagination.

Auchinleck's letter to his commanders is revealing in two ways. In the first we find him only interested in gauging responses to the commutation of sentences—a decision which very clearly helped avoid a deepening of the crisis but which came at the end of a long chain of decisions. It would have been far more useful to carry out a similar study of Indian Army perspectives, say, during the two months between the August communiqué and the November opening of the trials. The question posed then might have been the views of Indian Army soldiers on holding any trials in the first place. Auchinleck's letter also contains clues to his own evaluation of the key moments in the events leading

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<sup>128</sup> Biswanath Bost *RIN Mutiny: 1946* (Delhi: Northern Book Centre, 1988), 20, 34.

<sup>129</sup> "General Auchinleck to Field Marshal Viscount Wavell," 941.

up to the trials where things might have been handled differently. Should the INA members have been dealt with summarily on the battlefield, he asked. Should trials have been kept secret? The former he judged impractical, especially when a whole INA division surrendered without firing a shot. This ignored the fact that there was an active effort to minimize summary courts of justice for INA members long before the capture of Rangoon in 1945. On the question of secrecy for the trial Auchinleck believed that this would deny the accused a fair trial. This ignored the fact that it was standard practice in Britain to hold wartime trials for violations of the Treachery Act of 1940 in secret and execute those found guilty in similar obscurity.<sup>130</sup> If fairness been of paramount concern for the trials, then tampering with the ordinances surrounding statutes of limitations to allow the trying of inconveniently dated offenses seems equally unjust.

The most surprising omission in his report, however, was any consideration of the relationship in the trials between crimes of illegitimate violence and treason. It did not consider the possibility of trials, such as those carried out by most Allied armies, that did not include charges of waging war against the King. Nor did his report or the debates in the fall of 1945 consider the alternative of trying those accused of flogging regular POWs to death, shooting indiscriminately at POWs, or of torturing POWs first, as was done in the case of the first Japanese war crimes trial in Singapore. If they were purely crimes for violence, rather than including charges of treason, it may have significantly altered the political calculus as Congress fully backed the INA defense. It is easier for us, decades after decolonization, to imagine these alternatives. But this is part of the point: in the fall of 1945 the balance of concern was so weighted towards a politics of treason that it trumped the better judgment of fairly pragmatic late-colonial officials. They were blind to the alternative of war crimes trials that were already underway for Japanese soldiers, but beyond this less realistic

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<sup>130</sup> R. A. Melikan, *Domestic and International Trials, 1700-2000: The Trials in History* (Manchester University Press, 2003), 93-98.

possibility, went out of their way to try, in the most symbolic of places, treason together with violent crimes that could just as well have handled in the relative obscurity of wartime military courts, on an arbitrary scale of the Army's choosing. The "first-class blunder" of the Red Fort trials was certainly one of the most important events in the final stages of decolonization on the subcontinent. The INA rarely had the opportunity to participate in the brutal counterinsurgency campaigns of Japan's occupations, and thus the crimes of brutality its soldiers were accused of were generally limited to POW abuse and the execution of its own members. As the following chapter shows, however, the early postwar trials would have an impact on the handling of crimes more serious and larger in scale than those considered in India.

## Chapter 3: British Renegades Beyond the Subcontinent

The evaporation of political will for trying Indians who collaborated with the Japanese is best remembered for its domestic impact within India. It was seen as another stark symbol of the rapid weakening of British power in its most important colony. The attempt to focus on treason cases involving atrocities of the Indian National Army had not only backfired as a way to dull opposition to what was widely seen as purely political trials, but it was further embarrassing because the trials failed to prove that the Indian National Army had engaged in anything close to the brutality the Japanese military was known for. Though some trials for atrocities without charges of treason continued into the spring of 1946, they generally confirmed the image of a liberation army that stayed focused upon its military goal and avoided the darker consequences of military collaboration which sullied the reputation of some of Japan's other military allies. At worst, nationalists could argue, there were a few misguided soldiers guilty of POW abuse or the harming fellow Indians within the ranks of the INA.

This chapter considers the fate of "Indian renegades" beyond the Indian subcontinent and argues that the policies established in India directly impacted the politics of retribution in other colonies. If the INA soldiers fighting on the Burmese front were able to avoid many of the acts of brutality required to sustain military occupations, this was not true for some Indians as well as other British imperial subjects across Southeast Asia. It was also not true for members of the Indian Legion fighting as far away as France where, during a desperate retreat, they earned a fearful reputation for rape and pillage. Unburdened by the need to consider political consequences or need to identify the actual perpetrators of atrocities, French resistance forces shot more Indians than were executed in the entire British Empire combined.

*Wartime Treason and Atrocities in Southeast Asia*

The conduct of the Indian National Army in Burma, and especially its impact on the morale of other Indian forces was naturally the highest priority for British officials but the INA was not its only concern. Hundreds of thousands of Indian subjects resided in the concessions and colonies of Britain stretching from Shanghai to Singapore, from Malaya to British Borneo. Engaged in trade or directly serving local British administrations, when Japanese occupations were established, Indians were particularly vulnerable targets. The Japanese military saw them both as a source of wealth to be squeezed, and unlike the Chinese minorities that were often assumed to be hostile, Indians were actively courted or coerced into an independence movement that was expected to fully support Japan's war effort. This support was often limited to financial contributions or propaganda, but also included helping the Japanese military police apprehend, torture, and liquidate suspected resistance activists.

The questionable conduct of Indian subjects in the occupied territories had already become a minor diplomatic issue as early as September 1942. Adolf Berle, a U.S. assistant Secretary of State tasked with intelligence liaison duties passed on to the British Foreign Office U.S. concerns that Indians were being actively recruited by the Japanese in occupied Hong Kong. Most alarming was a report that American internees were being guarded by Sikh police.<sup>1</sup> In formulating its reply over the course of the month to follow, the Foreign Office emphasized that the number of Indians believed to have been suborned by the Japanese was low. These Indians in the Far East were, it explained, "in a very difficult position" and that, given Japanese inducements, "it is perhaps only natural that personnel such as the Hong Kong police should prefer to continue their paid duty to leading the life

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<sup>1</sup> "From Washington to Foreign Office" (6 Sept., 1942). L/P&J/12/653, 2. *IPI* fiche number 0459.



of a prisoner of war.”<sup>2</sup> This more sympathetic view mirrored the early leniency shown towards the INA. It was less common in later communications and postwar trials but was supported by intelligence reports coming in around the same time deploring the conditions Indians were facing in Hong Kong while in Japanese custody. Severe torture was reportedly meted out to uncooperative prisoners. Around one hundred Indians faced ghastly medical conditions when they were left on a hospital “hut” floor among “pools of blood, mucus and pus” in the Argyle Street camp where many Indians were interned, and several witnesses claimed that one Capt. Matreen Ahmed Ansari died in the Ma Tau Chung Camp across the street after being castrated for refusing to serve in the INA.<sup>3</sup>

In Hong Kong it was Sikh police accused of working for the Japanese as guards. In the Changi POW camp in Singapore Sikhs in the newly formed Indian National Army were serving as guards for over 15,000 Allied prisoners of war. There they were despised both as traitors and for their cruelty.<sup>4</sup> Only a few days before the Americans reported their Hong Kong concerns, an INA firing squad under a Captain Rawa carried out a Japanese order to execute four British and Australian prisoners of war accused of trying to escape from the Changi camp.<sup>5</sup> After the war, Lieutenant General Fukuei Shimpei was shot at the exact same location after being found guilty on two counts of violating the

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<sup>2</sup> “From Foreign Office to Washington” (22 October, 1942). L/P&J/12/653, 23. *IPI* 0460.

<sup>3</sup> “Indian Prisoners of War” (Sept 30, 1942), L/P&J/12/653, 11. *IPI* 0459. On the fate of Capt. Ansari, see “P.W. 2” (26 Oct., 1942) L/P&J/12/653, 40. *IPI* 0460. Other accounts claim Ansari was beheaded or executed later in October, 1943. Charles G. Roland *Long Night’s Journey into Day: Prisoners of War in Hong Kong and Japan, 1941-1945*. (Wilfrid Laurier Univ. Press, 2001), 88-89. Other witnesses in these reports suggested, however, that while some Indians “been subjected to the indignities and occasional atrocities,” “There is little doubt, however, that Japanese policy is to treat Indian P.W. leniently.”

<sup>4</sup> On attitudes towards the Sikhs in the Changi camp see A. J. Sweeting, “Prisoners of the Japanese” in Lionel Wigmore, ed. *The Japanese Thrust. Australia in the War of 1939-1945*. (Canberra: Australian War Memorial, 1957), 514, 524.

<sup>5</sup> “POWs Shot to Compel Others Sign Parole” *The Straits Times* (26 February, 1946), 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460226.2.25.aspx> (Accessed October 22, 2011) See also R. P. W. Havers. *Reassessing the Japanese Prisoner of War Experience: The Changi POW Camp, Singapore, 1942-5* (London; New York: RoutledgeCurzon, 2003), 71.

law and usages of war, the second of which was his command responsibility for the execution.<sup>6</sup>

Complicity in this execution of Allied POWs was far more troubling than any of the crimes members of the INA were prosecuted for at the Red Fort or thereafter and, as General Fukuei's trial suggests, was also seen as a war crime. None of the Indian members of the firing squad who followed Fukuei's orders faced a similar fate.

During the war, none of the accusations against Indian guards at Changi that would later find their way into POW memoirs had reached Indian Political Intelligence. American claims that Sikh police were serving the enemy so soon after the occupation of Hong Kong, however, renewed British concerns about Sikh loyalties in Hong Kong leading up to the outbreak of war in the Pacific. These concerns had grown out of a "steel helmet incident" of late 1940 when 83 Sikh soldiers of the 20<sup>th</sup> Heavy Battery of the Hong Kong and Singapore Royal Artillery were court-martialed in connection with a mass Sikh insubordination.<sup>7</sup> The issue of the collaboration of Indian subjects in Hong Kong reemerged after the war in February 1946, just as the imperial government was coping with the aftermath of the Royal Indian Navy mutiny. The Commander in Chief in Hong Kong requested

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<sup>6</sup> The execution is remembered as part of what has become known as the Selarang Barracks Incident at Changi prison in September, 1942 when the camp's POWs almost all refused to obey a Japanese order to sign a document pledging not to attempt escape from the camp. Following the execution, the prisoners were all crammed into a small area around the central square of the camp in dangerously cramped conditions which eventually led to compliance. The attempt to compel the prisoners to sign, and the moving of the prisoners into the square comprised the other charge in Fukuei's postwar trial. Havers offers a full chapter account of the incident in *ibid.*, 65-80. A synopsis of Fukuei's war crimes trial, no. 235/825, and the identification of Captain Rawa as the head of the firing squad is found online at the University of California, Berkeley War Crimes Study Center. <http://socrates.berkeley.edu/~warcrime/Japan/singapore/Trials/fukuei.htm> (Accessed November 1, 2011)

<sup>7</sup> This was not the first incident of a similar kind. It was preceded in 1939, by another incidents in Egypt and elsewhere involving resistance to wearing steel helmets by Sikhs. Johannes H. Voigt. *India in the Second World War*. (New Delhi: Arnold-Heinemann, 1987), 65. This suspicion was no doubt strengthened by, around the same time, the escape to Japanese occupied Guangzhou of three civilian Sikhs who had been arrested for spreading sedition. In Guangzhou, the three soon received the help of none other than INA founder Major Fujiwara Iwaichi who secured them passage to Bangkok. For more on the "steel helmet" incident, its causes, and British failures to correctly identify and address them, see Chandar S. Sundaram "Seditious Letters and Steel Helmets: Disaffection among Indian Troops in Singapore and Hong Kong, 1940-1, and the Formation of the Indian National Army" in Kaushik Roy, ed. *War and Society in Colonial India, 1807-1945* (New Delhi; New York: Oxford University Press, 2006), 140-146.

permission from the War Office to proceed with treason trials for two Indian watchmen from Punjab, Nand Singh and Jass Singh, who were accused of having betrayed the presence of an American pilot to the Japanese.<sup>8</sup> The Chinese person who hid the pilot was believed to have been executed, but the fate of the pilot is unknown. The timing of this request could not have been worse, as the British were already trying to contain the violent backlash associated with the Red Fort trials.

As we saw in the previous chapter, the official policy towards Indian “renegades” within India came to settle upon prosecutions of only a few INA members who were directly guilty of violent crimes. The Hong Kong case was an example of the far more lethal consequences of collaboration with any occupier in the capacity of informer. Unlike INA soldiers guilty of direct abuse of POWs, for example, these watchmen did not themselves carry out any violence. Indeed, they could argue they were merely performing the regular duties of their otherwise civilian careers. However, their actions resulted in the death of a civilian and possibly an American pilot.<sup>9</sup> The British authorities may have been tempted to ignore this Hong Kong case and follow a more narrow definition of atrocities but they were faced not only with the moral and potential diplomatic challenges the case of the watchmen presented, but any lenient approach would have exposed a glaring inconsistency in British treatment of various ethnic groups among its imperial subjects. The solution was to extend the definition of atrocities to include indirect responsibility for violence borne by informants. This “partial departure” from the policy within India of prosecuting only direct atrocities was necessary in Hong Kong, as one official explained, “to cover cases of Chinese already under trial on this

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<sup>8</sup> “C in C Hong Kong to The War Office” (24 Feb., 1946) L/P&J/12/764, 106. *IPI* 0469

<sup>9</sup> The pilot stood a good chance of being executed by the Japanese military even if he had immediately surrendered himself as a prisoner of war upon landing.

account.”<sup>10</sup> By April, 1946 the case was permitted to go forward, and set a precedent for the handling of informers in other areas where a British military administration held sway.

In the Philippines, which would gain its independence from American rule that same summer, the fate of Indian collaborators was in the hands of the American Counter-Intelligence Corps and later the Philippine courts.<sup>11</sup> A list of fourteen suspected Indian renegades who had been detained in the Philippines reached British Indian Political Intelligence officers, but most of them had already been released, sometimes on bail, pending an investigation. The bulk of those under investigation consisted of local members of the Indian Independence League, the civilian counterpart to the Indian National Army. This group had raised money for the war effort, and its leading members gave anti-imperialist speeches during the war. Only one of them, one Abdul Khan, was accused of violence. A note by his name accused him of serving “as spy and informer for the Japanese; was responsible for the arrest, detention and torture of guerrilla suspects and was responsible for the apprehension and execution of at least 1 Filipino.”<sup>12</sup>

The fate of arrested Indians in Philippines is unknown, but none of the accused Indian collaborators in the Philippines are found among the heavy treason sentences reviewed by the Philippine Supreme Court, or on the list of collaborators in the Philippines pardoned in 1953. In April, 1946, F. S. Tomlinson, the British acting Consul-General in Manila, expressed doubt that any of their cases would go forward since, “under the penal laws of the Philippines, aliens cannot be

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<sup>10</sup> I have not been able to determine the outcome of the trial. The letter is in L/P&J/12/764, 124. For more on the approval of the exception for informers and permission to proceed with the case see telegram to SACSEA L/P&J/12/764, 138. *IPI* 0469.

<sup>11</sup> See chapters three and four.

<sup>12</sup> “List of Alleged Indian Collaborators Who Have Been Detained In the Philippines” attached to letter of F. S. Tomlinson to Secretary to the Government of India (3 April, 1946) L/P&J/12/764, 146-7. *IPI* 0469.

prosecuted for treason.”<sup>13</sup> This was true at the time the Indians might have committed their acts. However, the article for treason in the Philippine penal code had been specifically amended by executive order in May, 1945 to address this perceived shortcoming. A new paragraph was added, extending punishment for treason to any “alien, residing in the Philippines.”<sup>14</sup> It is not clear whether the new legislation was designed to be used as an *ex post facto* law in the way treason and war crimes laws were retroactively applied in many countries after the Second World War. But only a few rare treason cases involving complex issues of citizenship ever reached the attention of the Philippine Supreme Court in the early aftermath of the war and none of these involved a direct challenge to this amendment.

The fate of a small number of Indians in the Philippines was not likely a matter of great concern. In Malaya and Borneo, however, the British Military Administration (BMA) faced a problem of Indian collaboration and atrocities that was both larger in scale and considerably more complex. The recruitment of POWs among the ruins of a defeated Singapore and the deployment of INA soldiers on the battlefields of Burma are the best remembered scenes in the history of the INA. But it was in Japanese-occupied British Malaya that thousands of mostly Tamil Indians who had never served in the British military enlisted for the Indian National Army, joined the Indian Independence League, or made voluntary—though often voluntary in name only—contributions to the Japanese war effort.<sup>15</sup>

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<sup>13</sup> *ibid*, 145.

<sup>14</sup> The treason law was amended by Executive Order No. 44, May 31, 1945. See Emiliano R. Navarro, “The Law of Treason in the Philippines” *Philippine Law Journal* 30(5) (1955), 726-7.

<sup>15</sup> Joining the Indian Independence League was certainly a way to express support for the movement, but for Indians in Malaya also a key to survival under occupation, securing its members passes for free movement, and preventing harassment from Japanese soldiers. On this and on the issue of contributions to the movement, see Paul H. Kratoska, *The Japanese Occupation of Malaya: A Social and Economic History*. (Honolulu: University of Hawai‘i Press, 1997), 104-109.

As in the cases of Hong Kong and the Philippines, Malaya and Borneo were territories under a highly repressive Japanese occupation where employment as police, military police auxiliaries or directly with the Japanese military primarily meant active participation in local counter-insurgency efforts infamous for their brutality. Two partially overlapping prison rosters of Indian collaborators under investigation in Malaya, including Singapore, from November, 1945 reveal the range of crimes they were accused of.<sup>16</sup> One of the lists identified the suspects by the five categories of Tamil, Sikh, (Nepalese) Gurkha, Bengali, or generic “Indian,” and contained 97 suspects, while the other listed 64 suspects with some 17 of the names crossed out. Both included some suspects who were merely accused of giving anti-British speeches, being “close” to the Japanese or of being a member of the Independence League. Altogether there were 48 unique individuals on the two lists who were claimed to be directly or indirectly complicit in acts of brutality. The majority of these were accused of: being jailers accused of torturing or killing prisoners, being informers or agents for the Japanese military police, betraying the location of hidden Allied personnel, or committing torture or murder in their capacity as detectives or police working for the Japanese. For example, one accused Tamil held in Penang jail, lance corporal N. A. Nathan, alias “Speedy Punche,” was described as an “Official ‘Beater-up’” for the Japanese military police.<sup>17</sup>

In December, 1945, only days before the first Red Fort sentences were handed down in Delhi, a press communiqué of the military administration reported that a total of 114 Indians had been arrested in Malaya. Some were unconditionally or provisionally released shortly thereafter but among 73 still under detention, 3 were accused of “war crimes,” 4 for being Japanese informers and 15 of being collaborators who were “guilty of crimes or acts of cruelty.” The remaining 51 detainees were

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<sup>16</sup> Not all names are legible so it is difficult to determine the exact overlap in the list, but a majority of the names are unique to each list. “List of Indians in Detention in Malaya” L/P&J/12/764, 78-81. *IPI* 0469. “List of Collaborators as at Nov. 45: Indians” L/P&J/12/764, 82-85. *IPI* 0469.

<sup>17</sup> *Ibid.*

accused only of “collaboration,” mostly for their membership in the Independence League.<sup>18</sup> Only a few of these cases find mention in press reports and, without court records or personal accounts, it is hard to evaluate any of these claims from a summary list of this nature or determine how many of the Indians finally made it past preliminary hearing to trial. Both in official communications and contemporary press reports there is considerable ambiguity about the specific crimes the accused were to be charged with.

British jurisprudence, as of 1945, offered a wide array of laws to choose from when it came to punishing collaboration and its consequences, including the 1351 Treason Act in an amended form (the accused were no longer, for example, subjected to the combination of hanging, drawing, and quartering), the 1940 Treachery Act, the slightly weaker 1939 Defense Regulation 2A, the Defense Regulation 31, the charge of “waging war against the King” under section 121 of the Penal Code, the Sedition Ordinance of 1938 Section 4, or the War Offenses Ordinance 1941 Section 3—all of which were used in various British proceedings after the Second World War involving disloyalty and wartime adherence to an enemy.<sup>19</sup>

The descriptions of the specific alleged acts committed by Indians in Southeast Asia were often vague, and it is likely that there was little useful evidence to support the trial of those who were accused and apprehended on the move by incoming British military forces. Writing more generally of collaboration trials under the British Military Administration throughout the region, the former Burma colonial officer F. S. V. Donnison laments that, “instead of well docketed complaints from prisoner of war and civilian internee camps, an overwhelming number of ill-prepared allegations

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<sup>18</sup> “Indians In Malaya: Relief and Welfare Measures” (17 Dec., 1945) L/P&J/12/764, 46-7. IPI 0469. Compare this to a total of 1,392 complaints of collaboration that had been reported to the Malay Peninsula Division by January, 1946, according to F. S. V. Donnison. F. S. V. Donnison *British Military Administration in the Far East, 1943-46*. (London: H. M. Stationery Office, 1956), 304.

<sup>19</sup> The list of laws used for collaboration offenses in Malay are found in “Man-in-the-Street” *Malayan Law Journal* 12(1) (1946), 3.

were received from the public mostly from persons of little substance...Many accused persons had to be released...for lack of sufficiently reliable evidence and it was becoming clear...accusations were being made with little foundation and frequently for motives of spite and revenge.”<sup>20</sup> In Malaya, Singapore, and Borneo, discharge notices and case dismissals, which were reported in *The Straits Times* more often than convictions, confirm this, again usually citing lack of evidence.<sup>21</sup> A lack of ready-at-hand evidence worthy of use in a trial, and an abundance of accusations based on spite and revenge are hardly uncommon in newly liberated societies. A lack of investigative resources and just as importantly, the absence of political will to commit them is a better explanation than poor quality of evidence contributed by “persons of little substance” to explain the limited efforts to punish atrocities or collaborators more broadly.

A more aggressive approach was taken by the returning British in carrying out an administrative purge. In British Malaya and Borneo local police forces were desperately needed both to reestablish order in the aftermath of Japan’s collapse and carry out hundreds of investigations of collaborators themselves comprised a large proportion of suspects in collaboration and atrocity investigations. Many of these forces were complicit in the brutality of the occupation. In the Philippines, as we shall see in Part Two and in U.S. occupied South Korea many of the occupation period constabulary and colonial period police were retained and these officers soon became a powerful voice against any thorough purge of wartime collaborators. By contrast, the British Military Administration in Malaya dismissed almost a thousand officers who had served the Japanese,

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<sup>20</sup> Donnison, *British Military Administration*, 303-304. For example. K. R. Menon, one of those listed, was dismissed for lack of evidence 3 January, 1946. “K. R. Menon” *The Straits Times* (3 January, 1946), 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460103.2.23.aspx> (Accessed October 1, 2011)

<sup>21</sup> See “BMA Policy On Collaboration” *The Straits Times* 19 February, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460219.2.32.aspx> “K. R. Menon” *ibid.*, 3 January, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460103.2.23.aspx> “Defense Not Called” 11 January, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460111.2.35.aspx> (all accessed October 1, 2011)



including some 500 Sikhs.<sup>22</sup> In this respect, it resembled the approach taken by both Communist and Nationalist administrations in China after Japan's surrender. While they did occasionally retain wartime police in urban areas for some weeks or months, deep purges of police were carried out in the cities. The price of this purge was greater for the British. While the expansive Chinese Communist Public Safety Bureau and thousands of Nationalist police officers trained in the Chongqing wartime police academy could replace many of these newly vacant key positions throughout China, British military and civilian administrative resources were already spread extremely thin by the close of the war. Also, the British Military Administration could not easily replace purged police with temporary military police since the Indian soldiers deployed throughout the region increasingly protested being used to maintain stability in the empire.<sup>23</sup>

For the Military Administration, public security was the paramount challenge of the early postwar period, and few resources could be used to collect or investigate allegations of collaboration, whether it be of Malays, Chinese, Eurasians, Westerners, or Indian "renegades." Nor was there any pressure from above to pursue investigations of wartime disloyalty with any vigor, even before a clarification of policy regarding Indian collaborators came to have an impact on all colonial subjects. A Special Court for collaboration cases under a variety of laws against sedition, treason, and treachery was set up in October, 1945 in Singapore and later elsewhere in Malaya and British Borneo. However, official policy in Malaya and Borneo was to, "dissipate as speedily as possible whatever pro-Japanese sentiments may still remain." Therefore, "treatment of those who have collaborated with the enemy should be founded on a tolerant view of their conduct," with only strong cases to go forward against

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<sup>22</sup> Bayly and Harper *Forgotten Wars*, 93.

<sup>23</sup> Kratoska *Japanese Occupation of Malaya*, 306-8.

“ringleaders” who engaged in propaganda, in activities “calculated to assist the enemy’s operations” or against those had applied for enemy nationality.<sup>24</sup>

Despite these limitations, by late January, 1946, the BMA in Malaya was ready to begin its trials of collaborators, including Indians, some of whom were only suspected of having given seditious speeches, delivered propaganda broadcasts or were members in the treasonous Indian Independence League.<sup>25</sup> The severity of these crimes in the face of the King’s law seemed to be confirmed only a few weeks earlier when the convicted traitor often referred to as “Lord Haw Haw,” William James, was hanged in London for his wartime Nazi propaganda broadcasts, despite doubts regarding his British citizenship.<sup>26</sup>

As the trials in Malaya approached, the New Democratic League of Indians in Singapore sent a cable to Commander-In-Chief Claude Auchinleck thanking him for his wise decision to remit the sentences of the first Red Fort convictions and urged him to secure the release of all Indians in Malaya.<sup>27</sup> By the end of January, “a panel of top rank lawyers” had been despatched from India to defend the accused, reminiscent of the the powerful figures who stepped forward to represent the accused at Red Fort and helped transform the proceedings into a national spectacle.<sup>28</sup> At the

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<sup>24</sup> “Memorandum on Treatment of Renegades and Quislings, and Policy Regarding the Trial and Punishment of Disloyal Persons in Malaya Who Collaborated with the Enemy” (October 1, 1945) L/P&J/12/764, 3-4. On the establishment of the Special Court in Singapore see “Mr. J. C. Cobbett to Investigate Collaboration Offenses” *The Straits Times*, 10 October, 1945, 4. <http://newspapers.nl.sg/Digitised/Article/straitstimes19451010.2.36.aspx> (Accessed October 1, 2011)

<sup>25</sup> Membership in the league was all but compulsory for Indians if they wished to move and operate freely under the Japanese occupation

<sup>26</sup> On the treason trials of William James, Charles Cousens, and John Amery, see Judith Keene. *Treason on the Airwaves: Three Allied Broadcasters on Axis Radio during World War II* (Lincoln, NE: Bison Books, 2010).

<sup>27</sup> “Indian Organisation Cables Auchinleck” *The Straits Times*, 9 January, 1946, 4. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460109.2.42.aspx> (Accessed October 1, 2011)

<sup>28</sup> “Lawyers from India” *The Straits Times*, 30 January, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460130.2.23.aspx> (Accessed October 1, 2011)

Southeast Asia Command there soon emerged a concern that the general “tolerant view” that was to be taken toward collaboration in Malaya was not quite tolerant enough when it came to Indian subjects. The War Office was pressed to clarify whether or not trials of Indians in Malaya were to follow the new guidelines in India which dropped all of the simple treason charges.<sup>29</sup>

By February, only 10 simple collaboration cases involving Indians had actually had reached trial.<sup>30</sup> One reason for this relatively low case number may have been the cumbersome process required to bring collaboration cases to trial under the British Military Administration in Malaya. The police were already overwhelmed with regular crime and unrest in rural areas—including acts of violent retribution against collaborators being carried out in the name of Chinese and Malayan resistance groups. By contrast, a complex legal arrangement to limit treason cases required that suspected collaborators appear first before a special court, a district court, and only then finally a trial before the superior court assembled to try collaboration offenses under Proclamation 21 of the Malay Peninsula Division.

While discussions over the scope and jurisdiction of the Indian policy continued, the trials of Indians, including that of a prominent lawyer, S. C. Goho, were ordered postponed. Soon, however, the issue became more pressing. As the transition from military to civilian administration scheduled for March, 1946 approached, the risk that any ongoing trials begun in military courts would have to be restarted in civilian courts grew.<sup>31</sup> In the meantime, the press focused on the progress of other

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<sup>29</sup> Viceroy to Secretary of State for India (29 Jan, 1946) L/P&J/12/764, 56. IPI 0469.

<sup>30</sup> Government of India, Home Dept. to Secretary of State for India (1 Feb, 1946) L/P&J/12/764, 57. IPI 0469

<sup>31</sup> One Indian, Ajab Singh, was executed in Singapore for murder on January 22, 1946, but while someone of the name “Ajaib Singh” is listed among 22 INA executed ‘martyrs,’ he is listed as executed in the Red Fort, not in Singapore. See Yadava *Forgotten Warriors*, v. 1, A number of Indian soldiers appear in press articles around this time in trials for crimes of violence and murder and the case may not have had anything to do with wartime conduct. Though there was a fear that treason cases would have to be restarted after the resumption of civilian control, Malaya was one of the territories where military trials were eventually allowed to continue to their conclusion. Donnison *British Military Administration*, 308.

treason trials. Among these were a number of accused Eurasian collaborators, including Charles Joseph Paglar, a physician and president of the Eurasian Welfare Association, along with the couple Charles Bell and 21 year-old Agnes Lee.<sup>32</sup> The final decision on how to calibrate the degree of tolerance in treason cases given the new INA trial policy came from the War Office on 8 March, when it ordered that no treason or collaboration cases should go forward in Malaya and Borneo that did not involve atrocities or the newly included category of informers. It also ordered that this once exclusively Indian policy should be “extended to collaborators of all races who, in their view, should be treated alike throughout Malaya and Borneo.”<sup>33</sup>

In Hong Kong, the policy arrived at in India as a result of the fallout of the INA trials was expanded to target informers in order to punish Indians along the same lines as Chinese subjects. In Malaya, Singapore and British Borneo, the Indian policy to end trials of those guilty of simple collaboration with the Japanese and focus on atrocities helped determine the course for all remaining simple collaboration proceedings against British colonial subjects. However, given that the directive was issued only a few weeks before the reinstatement of civil administration, and several months after the start of trials, it is not clear how many accused collaborators benefitted from the new policy until after their conviction, including Indians.

The extent to which the policy was followed in British Borneo as well as in Malaya is also uncertain. It was in a very poor state to arrest collaborators suspected of atrocities or carry out trials for them. The only two prisons in British Borneo had been destroyed during the war. Most of its Sikh

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<sup>32</sup> On the Paglar case see Kratoska *Japanese Occupation of Malaya*, 313 and Bayly and Harper *Forgotten Wars*, 93. The most detailed account of his case is Denyse Tessensohn “The British Military Administration’s Treason Trial of Dr. Charles Joseph Pemberton Paglar, 1946” (M.A. thesis, National University of Singapore, 2006). For a summary of the case against Charles Bell and Agnes Lee for being informers, see “Agnes Lee for Trial; Bell Inquiry Opens” *The Strait Times*, 16 January, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460116.2.28.aspx> (Accessed October 1, 2011)

<sup>33</sup> War Office to SACSEA (8 March, 1946) L/P&J/12/764, 129. IPI 0469.

dominated police force had been replaced in 1943 by Japanese trained local recruits and, in the aftermath of the war was in a “highly disorganized” state.<sup>34</sup> In Sarawak, the handful of BMA officials who assumed control after Japanese surrender lacked knowledge of the local circumstances, and half of the pre-war Sarawak Civil Service, which was to take control after the transition to civilian administration, had died during the Japanese occupation.<sup>35</sup> One hint that the directive may not have been fully carried out in Borneo comes from Jawaharlal Nehru, who visited Malaya for a week after the new policy was adopted in mid-March. Nehru had originally planned to honor the memory of the INA during his time there, including the laying of a wreath on a war memorial for them.<sup>36</sup> Upon the request of Supreme Allied Commander of the South East Asia Command, Louis Mountbatten, the Indian nationalist leader agreed to cancel this event from his agenda and avoid “actions which might impair the discipline of Indian troops.”<sup>37</sup> After his trip, however, on March 26, Nehru wrote with concern to Mountbatton about Indians still in custody in Borneo,

I have received some telegrams from Borneo informing me that a number of prominent Indians have been tried and sentenced to long terms of imprisonment for collaboration with the Japanese. I do not know all the facts and it is not easy to find out without some assistance from the proper governmental authority. I trust that the policy laid down in Delhi and here in regard to cases of pure collaboration will also be applied to Borneo and other parts of SEAC. If that is so, I imagine that some of the persons sentenced will have their sentences commuted, unless there are some other charges with regard to them.<sup>38</sup>

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<sup>34</sup> Michael H Baker, *North Borneo, the First Ten Years, 1946-1956* (Singapore: Malaya Publishing House, 1962), 59-60.

<sup>35</sup> Vernon L. Porritt. *British Colonial Rule in Sarawak, 1946-1963* (Kuala Lumpur; New York: Oxford University Press, 1997), 143.

<sup>36</sup> Hugh Tinker. *Men Who Overturned Empires: Fighters, Dreamers and Schemers* (Hampshire: Macmillan, 1987), 86.

<sup>37</sup> Entry for 17 March to Friday 22 March, 1946. Louis Mountbatten. *Personal Diary of Admiral the Lord Louis Mountbatten, Supreme Allied Commander, South-East Asia, 1943-1946*. (London: Collins, 1988), 304.

<sup>38</sup> Jawaharlal Nehru to Lord Louis Mountbatten (26, 1946) L/P&J/12/761, 85. IPI 0459. The primary focus of the letter was on funding for relief efforts and Nehru requested that any recovered Indian Independence League funds be used as part of relief efforts in Malaya. This was an an early communication in a long stream of letters and

As late as June, S. K. Chettur, the Indian Government representative for Malaya conducted a tour of British and Dutch colonial territories in Southeast Asia to inspect the conditions of Indian subjects, but his goal was also to “study the situation” of Indian collaborators still in custody.<sup>39</sup> It is difficult to determine where exactly things stood by late spring, 1946. According to F. S. V. Donnison, some half of 1,392 complaints of collaboration in Malaya were dismissed before reaching trial due to lack of evidence by January, 1946, but that still leaves hundreds of cases.<sup>40</sup> Similar wartime conduct could result in very different outcomes and, depending on which of the many possible charges were brought forward, some cases may not be included in this count.

A few Indian, Malay, Chinese, and “Arab” police detectives and jailers who continued to work under the Japanese, including one recipient of the King’s Police Medal were brought to trial in the course of 1946. The charges in these cases were not treachery, treason, or any of the other many charges punishing adherence to the enemy that were collectively referred to as “collaboration” cases. The British brought the far weaker charges of “causing hurt” for having tortured and extracted confessions during interrogations of suspects arrested during the Japanese occupation, including victims who were only guilty of having listened to foreign broadcasts or spread Allied news reports.<sup>41</sup> This is one of a few examples in the British Empire where wartime atrocities of collaborators were punished completely outside of the realm of laws relating to treason.

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telegrams between Indian leaders and the British over the dispersion of INA related funds throughout southeast Asia which lasted into the 1950s. Nehru originally intended to give the INA issue significant attention during a week long trip to Malaya in March, but agreed to Mountbatten’s plea not to after meeting him.

<sup>39</sup> “To Report on Conditions of Indians” in *The Straits Times* 8 June, 1946, 5.  
<http://newspapers.nl.sg/Digitised/Article/straitstimes19460608.2.55.aspx> (Accessed November 20, 2011).

<sup>40</sup> Donnison, *British Military Administration*, 304.

<sup>41</sup> See for example “14 Detectives” and “Inspector Cheah” in *The Straits Times* 30 April, 1946, 3.  
<http://newspapers.nl.sg/Digitised/Article/straitstimes19460430.2.35.aspx> (Accessed November 20, 2011).

The defense in a similar Singapore police torture case of 1946 which levied this charge, *Rex v. Alsagoff and others*, argued that accused police officers Hussein Ali Alsagoff, Ignatius Carvalho, and Perianan Suppiah were, “merely following orders,” and complying with the new ordinances and practices of the Japanese wartime administration. Employing a tactic that closely resembled a “suspended sovereignty” argument used by many wartime collaborators in the Philippines that was ultimately struck down by the Philippine Supreme Court in 1947, the defense in this Singapore case attempted to convince the court that the British Criminal Procedure Code was overridden by the Japanese Maintenance of Public Peace and Order directive.<sup>42</sup> This argument was roundly dismissed, but compared to the potentially heavy sentences of any collaboration related charges or to sentences handed down to Japanese guilty of similar crimes in war crimes proceedings, convictions for the beating and water torture of multiple individuals under the law against “causing hurt” in this and other cases resulted in very light sentences ranging from one to three years imprisonment.<sup>43</sup>

The impact of the extension of the Indian policy regarding collaboration cases is somewhat clearer in a later accounting of trials in a *Straits Times* article of November, 1946, coming over half a year after the transition to a civilian administration. Based on reports from various magistrates, it reported that out of a total 1,536 suspected collaborators, 57 accused were released unconditionally when the War Office ordered the extension of the Indian policy to the territories of the British Military Administration in March, presumably because they were wanted for simple acts of treason.<sup>44</sup>

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<sup>42</sup> “British Law and Police Officers During Japanese Occupation” *Malayan Law Journal* 12(9) (September, 1946), 65-69. See chapter 3 for discussion of the Philippine suspended sovereignty argument.

<sup>43</sup> “Alsagoff Gets 3 Years’ Gaol” *The Straits Times* 27 August, 1946, 5.  
<http://newspapers.nl.sg/Digitised/Article/straitstimes19460827.2.69.aspx> (Accessed November 20, 2011).

<sup>44</sup> “Progress in Collaboration Inquiries” *The Straits Times*, 23 November, 1946, 3.  
<http://newspapers.nl.sg/Digitised/Article/straitstimes19461123.2.38.aspx> (Accessed October 1, 2011).

**Table 3.1: Collaboration Cases under the BMA as of February, 1946<sup>45</sup>**

Cases passed on to special magistrates	947
Cases still under investigation	32
Convictions recorded	85
Death Sentences	9
Imprisoned	66
Fined	8
Bound Over	2

The small handful of death sentences announced in the press, though several of these were later reduced to long prison sentences, include: Doreen Wales de Silva and Manuel de Silva, accused of being military police informers and convicted February 8, 1946; Louis Phillip de Souza, a 67 year old Eurasian convicted as a military police informer March 6, 1946; Fara Singh, a Sikh police officer in British North Borneo accused of murdering five Chinese guerrillas, convicted June 16, 1946; Hamzah bin Mat Ajar, a former Sergeant in the Malay regiment and later a police officer under the Japanese convicted of killing three Chinese political prisoners June 24, 1946; Che Abdullah Haji Shaikh Hassan, sentenced to death for pointing out hidden British soldiers in 1942; Cecil Beings, a Eurasian informer sentenced to death August 10, 1946; Tan Jim Tee, a Chinese informer to the Japanese military police sentenced to death April 6, 1947; A. Thamby Durai a police officer sentenced to death for a lethal beating, and “Tuan” Karthingasu, a Ceylonese (Sri Lankan, most likely Tamil) assistant to a Japanese officer also convicted of beating a man to death and other crimes of brutality in September, 1946.<sup>46</sup>

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<sup>45</sup> Listed in *ibid.*

<sup>46</sup> “De Silva and Wife Sentenced to Death; Recommendation to Mercy” *The Straits Times*, 8 February, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460208.2.21.aspx>. “L. P. De Souza Sentenced to Death” *ibid.*,



Those who were released shortly after the shift in policy in March included the accused in the most intensely followed treason case, the Eurasian community leader Charles Paglar, when the prosecutor in his case, together with that of the suspected Indian collaborator S. C. Goho, received orders “not to proceed,” without any clear reason divulged or any exonerating dismissal offered.<sup>47</sup> Neither Paglar or Goho were accused of direct or indirect complicity in atrocities and were thus prime examples of the sort of simple collaboration case ordered dropped by the directive of the War Office. When asked by the puzzled defense counsel if the announcement “not to proceed” was the equivalent of an acquittal, the prosecutor, Wing Commander Buttrose responded, “My instructions in this case, which have come from the highest possible authority, are silent on this question...”<sup>48</sup> The new policy was not made public, leaving both opponents and supporters bewildered. Shinozaki Mamoru, an advisor and administrator in the Singapore military occupation government who testified at Paglar’s postwar trial and was deeply sympathetic to his friend’s cause, found it to be “an unusual verdict,” with the judge announcing that the trial, “stood adjourned until the accused’s natural death.”<sup>49</sup>

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6 March, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460306.2.32.aspx>. “Death Sentence On Sikh Affirmed” *ibid.*, 16 June, 1946, 1. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460616.2.18.aspx>. “Sergeant Sentenced to Death” *ibid.*, 24 July, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460724.2.48.aspx>. “Eurasian Sentenced to Death” *ibid.*, 10 August, 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460810.2.43.aspx>. “The Terror of Kelantan Escapes the Gallows” *ibid.*, 7 September 1946, 4. Karthingasu’s death sentence was reduced to 10 years imprisonment, as was that of Fara Singh and A. Thamby Durai. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460907.2.49.6.aspx>. “Man’s Death Sentence Quashed” *ibid.*, 27 March, 1947, 5. <http://newspapers.nl.sg/Digitised/Article/straitstimes19470327.2.68.aspx>. All Accessed October 1, 2011. On Che Abdullah Haji Shaikh Hassan, see Abu Talib Ahmad *Malay-Muslims, Islam, and the Rising Sun: 1941-1945* (Kuala Lumpur: Malaysian Branch of the Royal Asiatic Society, 2003), 136.

<sup>47</sup> Tessensohn “Treason Trial”, 111. S. C. Goho was given a glowing obituary by his colleagues in Malaya following his death in July, 1948. “Shrish Chandra Goho” *The Malayan Law Journal* 14 (August and September, 1948), 20-21.

<sup>48</sup> “Cases Against Goho, Paglar Withdrawn” *The Straits Times*, 24 March 1946, 3. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460324.2.29.aspx> (Accessed November 10, 2011).

<sup>49</sup> Mamoru Shinozaki, *Syonan, My Story: The Japanese Occupation of Singapore* (Singapore: Asia Pacific Press, 1975), 108.

At most, by extending to other territories the new Government of India policy to prosecute only treason cases involving atrocities, colonial authorities narrowed an already weak retribution process in Malaya. Trials already faced bureaucratic obstacles, a general policy that encouraged tolerance, and lacked investigative resources that were addressing more pressing security needs. The extension of the Indian policy might have had the laudable consequence of freeing up resources to focus on the many acts of torture and murder carried out by military and police collaborators during the occupation, but the scale of proceedings continued to be relatively limited, despite the fact that there was a strong public mandate for carrying out trials. Trying INA officers with the crime of waging war against the King, together with a limited number of crimes of violence against their own number did nothing to quell suspicions of the political nature of the prosecutions in India. In Malaya, there was considerable public interest and anger at the failure to prosecute collaboration in general and those guilty of, or indirectly responsible for atrocities in particular.<sup>50</sup>

The contrast between British retribution against the violent consequences of informers, police, and other collaborators accused of atrocities in Malaya, as compared to trials of Japanese war criminals by the Southeast Asian Command for similar crimes is telling. From January 1946 to December 1948, 280 death sentences (222 confirmed) were handed down in British war crimes trials, with 53 life sentences and another 477 sentenced to imprisonment, with a majority of these rulings in Malaya and Singapore.<sup>51</sup> There were over nine hundred Japanese accused of war crimes and a similar number of collaboration cases that were passed on to special magistrates. Compare these numbers with the 85 total reported convictions for treasonous atrocities and general collaboration. This number is nothing compared to death sentences of Japanese war criminals, let

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<sup>50</sup> For a number of examples of the local response, see the discussion in Ahmad, *Malay-Muslims*, 133-137.

<sup>51</sup> Hayashi Hirofumi "British War Crimes Trials of Japanese" *Nature-People-Society: Science and Humanities* 31 (2001), 86.

alone the total number of convictions. As a frustrated commentator complaining about the feeble prosecutions put it in September, 1946, the day after another two Japanese war criminals were executed in Malacca, “Unless Government treats the collaborators in the way they have punished the war criminals, the general public will regret that they did not become Kempeitai informers or Kempeiho themselves.”<sup>52</sup>

On the other hand, as Abu Talib Ahmad has pointed out, the spectacle of British judges passing judgment upon mostly Malayan and Eurasian accused collaborators or summarily dismissing thousands of local administrators and police, was deeply unsettling to many.<sup>53</sup> In a move with more obvious political consequences for the remnants of indirect rule, charges of collaboration with the Japanese were also used to depose and, in at least one case, deport all but four pre-war Malay Sultans.<sup>54</sup> Other Malay local officials found themselves on an ominous “Black and Gray” list being compiled by returning British Field Security or Investigation Teams.<sup>55</sup> The racial complexities of retribution in Malaya were further complicated by the prominent resistance role of the Chinese in the Malayan Communist Party, which in turn formed the core of the Malayan Peoples’ Anti-Japanese Army (MPAJA), as well as being apparent in the particular vigor with which the Japanese forces carried out mopping-up campaigns that often specifically targeted the Chinese population, most

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<sup>52</sup> “The Terror of Kelantan Escapes the Gallows” *The Straits Times*, 7 September, 1946, 4. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460907.2.49.6.aspx> (Accessed October 4, 2011). The Kempeiho were military police auxiliaries.

<sup>53</sup> Ahmad *Malay-Muslims*, 135.

<sup>54</sup> Simon C., Smith *British Relations with the Malay Rulers from Decentralization to Malayan Independence, 1930-1957* (Kuala Lumpur; New York: Oxford University Press, 1995), 58.

<sup>55</sup> A. J Stockwell, *British Policy and Malay Politics During the Malayan Union Experiment, 1945-1948*, Monograph - Malaysian Branch of the Royal Asiatic Society no. 8 (Kuala Lumpur: Printed for the Council of the MBRAS by Art Printing Works, 1979), 42.

infamously resulting in large scale massacres during the early days of the occupation in Singapore.<sup>56</sup>

By contrast, Malays were often overrepresented in Japanese wartime institutional positions of authority, including volunteer armies that explicitly avoided the recruiting of Chinese.<sup>57</sup>

In postwar Malaya, the small number of British convictions of treasonous atrocities was merely a fraction compared to a much larger scale process of retributive violence outside the courtroom. This took place at the same time in the form of liquidations and “people’s courts” that had much in common with the trials organized by the Traitor Elimination Bureau in Communist controlled areas of China that we will meet in Chapter Seven. In Malaya this process unfolded throughout the occupation in towns and villages within reach of the MPAJA and other organizations claiming to act on behalf of the resistance. In areas where they targeted widely reviled figures, this competing source of political justice could help bolster the political legitimacy of an alternative to British power.<sup>58</sup>

As we have seen, there were significant connections between the treason prosecutions on the subcontinent and the postwar policy in Southeast Asia both for Indians and other colonial subjects. But the process took place in areas that, unlike India, had endured harsh occupations without anything resembling the limited local control offered in Burma following its nominal independence in 1943—a case that we will consider shortly. The eventual British trials in Malaya, Singapore, and though less evidence is available, most likely British Borneo as well, were scaled down as a result of

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<sup>56</sup> On the massacres of the Chinese population see Hirofumi Hayashi *Kakyō gyakusatsu: Nihongun shihai shita no marē hantō* (Tokyo: Suzusawa shoten, 1992). A short summary of the massacre is found in Hirofumi Hayashi “Massacre of Chinese in Singapore and Its Coverage in Postwar Japan” in Yoji Akashi and Mako Yoshimura eds. *New Perspectives on the Japanese Occupation in Malay and Singapore, 1941-1945* (Singapore: National University of Singapore Press, 2008), 234-240.

<sup>57</sup> Lebra *Japanese-Trained Armies*, 117.

<sup>58</sup> For a description of the process of retribution against “traitors and running dogs” in Malaya and perceptions of it, see Kee Onn Chin. *Malaya Upside Down* (Singapore: Jitts, 1946), 203-4. Also, Bayly and Harper *Forgotten Wars*, 41-45.

INA trials in India in an effort to treat colonial subjects equally. The considerable attention paid to Indian cases in particular was an expression of British fears of the destabilizing effect of the issue—and not merely on Indian domestic politics. The political stability of a population of over half a million Tamil and other Indian migrants throughout Southeast Asia who often found themselves significantly worse off than they were before the Japanese occupation was a serious concern. More importantly, the large number of Indian forces who still served in a British military needed for deployment all over the former Japanese empire reminded colonial authorities that the “Indian renegade” issue impacted not only the course of a British exit from India, but its imperial and strategic interests throughout the region.

#### *Atrocities and Executions of the Indian Legion*

The trials in India ended with deaths in the street but almost none before a firing squad. In Southeast Asia, sentences were again light, and postwar trials trivial in scale. As previously mentioned, there was a small number of accused infiltrators and INA members shot or hanged in 1943 and 1944 within India and near the Burmese war front, but the Courts of Inquiry that might have led to many more were crippled by special order. There was one other place where Indian “renegades” faced execution for their wartime service on behalf of the Axis powers: France. The fate of a retreating Indian Legion in 1944 contrasts significantly with the retreat of the INA in Burma. The latter had reportedly good relations with a local Burmese population that had good reason to feel uneasy about the returning British Army. In France, the Indian Legion was not only made up of racially foreign soldiers, but served in a brutal German occupation that had little local sympathy and no complicating colonial context. In other words, the Legion faced almost uniformly hostile territory during its final retreat, the most challenging environment for the conduct of any army.

In France the issue was entirely unclouded by questions of treason and disloyalty and was based instead upon outrage against atrocities combined with, very likely, a strong racial component. In the violent interregnum between the retreat of German forces from occupied France and the establishment of a new government under a Gaullist administration in the summer and fall of 1944, local French resistance groups carried out a violent “purification” (*épuration sauvage*) of local collaborators with little or no recourse to judicial procedure.<sup>59</sup> The infamous French militia, suspected Gestapo informers, and local Vichy officials and sympathizers were not, however, the only victims in this final stage of a vicious cycle of reprisals that accelerated rapidly after the June Allied landings in Normandy. Enemy soldiers and administrators, including some Georgians and other nationalities fighting on behalf of the Germans, were occasionally shot by French irregulars before reaching detention camps. They were executed with or without summary trial as accused war criminals, or, in imitation of a well-established German wartime practice, executed as hostages in reprisal for victims of German atrocities in nearby areas still under occupation.<sup>60</sup> Among the targets of this summary justice were almost three dozen Indian soldiers of Infantry Regiment 950: The Free India Legion.

The Legion was the first military creation of the future leader of the Indian National Army, Subhas Chandra Bose. Before making his way by German and then a Japanese submarine to Japanese controlled Indonesia in early 1943, Subhas Chandra Bose secured German support for a “Free India Center” in Berlin in the spring of 1941. The center served primarily as a source of propaganda against the Allies and in favor of Indian independence. It was also key to the formation of a military unit

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<sup>59</sup> See Peter Novick, *The Resistance Versus Vichy: The Purge of Collaborators in Liberated France* (London: Chatto & Windus, 1968) and Herbert R. Lottman, *The Purge* (New York: Morrow, 1986).

<sup>60</sup> For examples of Georgian Wehrmacht troops being castrated or shot out of hand by French resistance, see. Robert Aron, *France Reborn: The History of the Liberation, June 1944-May 1945* (New York: Scribner, 1964), 137-9. For examples of French reprisal executions in revenge for German executions, see page 353.

under German command composed, for the most part, of several thousand former Indian POWs. Compared to the INA, the Indian Legion was a disunited and deeply demoralized unit, especially after Bose left them behind in 1943 to pursue more promising mobilization efforts with Japanese support.

Indian soldiers who had so recently suffered the discrimination of life in the British Army now found themselves under even worse masters, as one Viennese interpreter for the Legion, Leopold Fischer, remembers, “British officers had at least been tactful in their relations with Indian troops, whereas the attitude of the Germans was tactless and overbearing...”<sup>61</sup> At the same time, their German officers were envious of one of the benefits the Legion’s Indians received that helped keep their spirits up: a supply of valuable Red Cross packages that they should only have received while they were POWs.<sup>62</sup> Denied the opportunity to participate in any direct way in the liberation of India and frequently divided by internal strife and courting mutiny against their German officers, the soldiers of the Indian Legion were increasingly convinced they would meet an end as convicted traitors or else perish in a hopeless retreat fighting for a cause that was never their own.

The June, 1944 Allied landings in Normandy found the bulk of the Indian Legion deployed on the coast near Bordeaux. Their last chapter began in August with the Legion being transferred, like many other foreign volunteers, to the control of the Waffen-SS, one of many orders that troubled some of the Legion’s increasingly reluctant soldiers. Within days, the Legion was ordered to begin a lightning “redeployment” to prevent encirclement by the Allies, a threat made all the more pressing following landings on the Mediterranean coast on 15 August. During their retreat, the over two

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<sup>61</sup> Bharati Agehananda, *The Ochre Robe* (Santa Barbara, CA: Ross-Erikson, 1980), 56. Fischer, who was a student and later scholar of Indian thought and religion in the anthropology department of Syracuse University, adopted the monastic name Bharati Agehananda.

<sup>62</sup> G. J. Douds. “The Men Who Never Were: Indian POWs in the Second World War.” *South Asia: Journal of South Asian Studies* 27, no. 2 (2004), 192.

thousand Indian troops joined a ragtag rear guard of some ten times as many that came to be known as “Elster’s column” after its commander, Major General Botho Elster. Most of this German column, almost daily harassed by Allied bombardment and ambushes by the French resistance, surrendered in September, but the majority of the Indian forces escaped France by early October.<sup>63</sup>

The retreat of the Indian Legion covered more than a thousand kilometers of hostile French territory, much of it on foot and bicycle. Though it was a harrowing experience, it resulted in surprisingly few Indian losses.<sup>64</sup> One battalion of the Indian Legion carried out anti-partisan raids in the weeks before the retreat, which may have contributed to local hostility. However, one of the Legion’s soldiers, Gurbachan Singh Mangat, claims that the legion reached an oral understanding with French resistance forces which prevented any harassment during the first segment of the retreat up until they reached Ruffec, about 65 kilometers south of Poitiers.<sup>65</sup> But it was from around this point of the retreat, and especially after they passed Poitiers, the Indian Legion became widely reviled by the local populace, which accused it of carrying out rampant looting, acts of brutality, and rape. Claims of Indian atrocities made their way into reports by the mayors of Sainte-Gemme, Chateauroux, and Poincennet which detailed the violence that accompanied the passage of the Legion in late August and early September.<sup>66</sup> An otherwise admiring interpreter for the Legion, Leopold Fischer, did not spare the soldiers criticism in his memoirs,

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<sup>63</sup> After returning to Germany the Legion was kept largely idle until many of its members made a failed attempt to escape into Switzerland at the end of the war.

<sup>64</sup> Less than two percent, according to an estimate by one INA officer among them, Captain Gurbachan Singh Mangat. Gurbachan Singh Mangat Mangat, *Indian National Army, Role in India’s Struggle for Freedom* (Ludhiana: New Delhi: Gagan Publishers; Distributed by Classical Pub. Co, 1991), 103.

<sup>65</sup> Gurbachan Singh Mangat, *The Tiger Strikes: An Unwritten Chapter of Netaji’s Life History* (Ludhiana: Gagan Publishers, 1986), 176.

<sup>66</sup> Massimiliano Afiero, *Indische Freiwilligen Legion Der Waffen SS: La Legione Indiana Di Subhas Chandra Bose* (Voghera (Pavia): Marvia, 2007), 65-73. Full transcriptions of some of these documents, found in the Archives départementales de l’Indre, M 2775 can be found in an online hosted presentation by Jean-Louis Laubry “Le passage



The four weeks retreat through France were hard and bitter for me—not because of the retreat itself...but because my enthusiasm for everything Indian received its first hard knock. The reason for this was that some of the legionaries behaved like beasts. Only a small minority did, it is true, but a drop of ink in a glass of water is enough to discolour the whole; and because of their abominable behavior the whole Legion got a bad name. To my knowledge there were five cases of rape during the retreat, and all the victims were young girls under twenty. One of our fellows named Ghulam Jilani, from the Fifth Company, openly boasted that he had raped a twelve-year old girl. A week later a bullet got him.<sup>67</sup>

According to Hans Kutscher, who served as an adjutant and later commander of the third battalion of the Indian Legion in its final days before going on to become a judge on the German Federal Constitutional court from 1955-1969 and president of the European Court of Justice from 1976-1980, “during the retreat the commanders had to deal with severe breaches of discipline among their Indian soldiers,” and specifically, “the problem was to make the Indians understand that the French women, now on the side of the enemy, were not fair game.”<sup>68</sup> Courts-martial were held in at least four rape cases, though in one trial the main witness to the crime excitedly identified a Sikh judge in the case as the perpetrator of the rape, rather than the accused, which suggests the complicating racial component of the interaction between the Legion and the populace.<sup>69</sup> A

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des Hindous dans le département de l’Indre (fin août 1944) Présentation et notes” <http://alaingievis.cher.com/HINDOUS/hindou.html> (accessed October 10, 2011).

<sup>67</sup> Bharati Agehananda, *The Ochre Robe*, 61-2.

<sup>68</sup> Quoted in Rudolf Hartog, *The Sign of the Tiger: Subhas Chandra Bose and His Indian Legion in Germany, 1941-45* (New Delhi: Rupa & Co, 2001), 144.

<sup>69</sup> Ibid., 145. Hartog mentions that several German officers who were charged with condoning war crimes in a postwar trial Bordeaux were acquitted and that the evidence was based on “uncorroborated reports of atrocities by the Indian troops...which were circulated by the French resistance.” Hartog may be referring to above cited reports by local officials. He expresses frustration at being unable to convince a student studying the conduct of the Legion in France that these charges were false. Ibid., 147. The student may have been R. G. Loosmore, who wrote his M.A. thesis, “The Springing Tigers in France, 1944” in 1983 at University of Leicester. The thesis contains very few citations and no page numbers, making it hard to use but is perhaps the only work to focus specifically on the Legion activities during this time.

September *Le Figaro* article claimed that the head of the retreating column, General Elster, took responsibility for the atrocities of the passing Indian Legion, and paid several million francs in compensation to a local French prefect.<sup>70</sup> The memoirs of Legion members deny any serious misconduct. The accounts of the retreat by former legionaries Mangat and N. G. Ganpuley both note the difficulties in making their way back through hostile territory but have nothing to say about atrocities. Ganpuley merely notes that, “After the war, the French Government tried to hold the Legion responsible for the little damage and destruction of this march route; but who has ever heard of troops allowing their way to be blocked wantonly?”<sup>71</sup>

On 22 September, only a few days after the passing of the Indian Legion, a Government of India liaison officer, a Major de Gale, was dispatched on a “Mission to Endeavor to Get In Touch with Members of the Free Indian Legion.”<sup>72</sup> Picking up clues to their whereabouts and interviewing a few stragglers as he made his way from US lines into liberated areas under the control of the French resistance, he attempted to locate any and all captured legionaries in French hands when he stumbled upon some unsettling news,

From Poitiers I went to Bourg-Archambault where I was informed that the Indian prisoners (89 in number) had been made over to a Capt. ANATOLE (an F.F.I. nom-de-guerre) of the “Groupes la Panthere” on 19.9.44, that some of these had been shot on the way to Poitiers and that a number had been shot later in the Place d’Arme of Poitiers about 22.9.44.<sup>73</sup>

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<sup>70</sup> Quoted in “Free Indian Legion in France” (October 10, 1944) L/P&J/12/661, 14. *IPI* 0473.

<sup>71</sup> Ganpuley, N. G. *Netaji in Germany; a Little-Known Chapter*. 1st ed. (Bombay: Bharatiya Vidya Bhavan 1959), 163. He is likely referring to the shelling and burning of villages that the Legion passed through.

<sup>72</sup> “Mission to Endeavor to Get In Touch with Members of the Free Indian Legion” (24 September, 1944), L/P&J/12/661, 9. *IPI* 0473. The work of Major de Gale is also described in Jan Kuhlmann. *Subhas Chandra Bose und die Indienpolitik der Achsenmächte*. (Berlin: Schiler, 2003), 342-3.

<sup>73</sup> “Report on Mission” (12 October, 1944) L/P&J/12/661, 17. *IPI* 0473.

Returning to Poitiers the unnamed officer confirmed the execution of 27 Indian prisoners in the main square on 22 September. He also discovered that almost all Indian prisoners still held in the area were, in fact, not captured on surrender but were legionaries who had deserted to French lines. “It is unfortunate, therefore, that the least guilty of the Indians of the “Free India Legion” should have been shot,” observed de Gale.

Major de Gale, later interrogated two German officers who deserted at Ruffec with the legionaries who were executed: the medical officer Dr. Koch-Grünberg and the chaplain Ernst Bannerth.<sup>74</sup> The Germans who, unlike the Indians, had not received mistreatment at French hands, claimed that they had been turned over to French resistance forces who were “unacquainted with the circumstances” of their desertion and that tragically, “The men shot where the most anti-Legion men in the Legion.”<sup>75</sup> Because of the “ill-feeling against Indians” in Poitiers, Major de Gale was not able to get the remaining Indian prisoners released, but after some difficulty eventually managed to have them removed to a special camp exempted from labor. Later reports from de Gale reported more executions. Six Indians were shot further northeast at Bourges, and another captured Indian put before a firing squad a few kilometers south of Bourges in Levet, all in the same month of September, 1944.<sup>76</sup>

With this handful of incidents, French resistance forces carried out more recorded executions of Indians who fought under the Axis powers than did British military administrations all over the empire or in other territories liberated from Japanese control combined. The actual circumstances of the French summary trials and executions of these Indian soldiers are not well understood. Given how rapidly the Indian troops were moving across France, mostly at night, and the fact that they were

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<sup>74</sup> Bannerth went on to a distinguished career as a scholar of Islam and Egypt in post-war Austria.

<sup>75</sup> Ibid., 23.

<sup>76</sup> Letter from Cecil Kisch (17 January, 1945), L/P&J/12/661, 82, *IPI* 0473.

all executed in the same month that the atrocities were committed, it seems unlikely that much of an effort went into trying to establish whether or not any particular captured Indian was in fact guilty of the crimes reported. Doing so would have been a considerable challenge given the wide spread of territory under divided control between different resistance groups or local administrations. As in the case of the German court-martial in which the witness to a rape identified a completely unconnected Sikh as the perpetrator, the unfamiliarity of the local French population with South Asians in general may well have led to racist generalizations.

However, though frightening reports of rape and pillage at night by exotic looking Indians might have played an important role in aggravating retribution, it is important to see the retribution against the Indian Legion for atrocities in the context of the broader violence of the moment of liberation. The Indians were far from the only foreigners to pass through. There were many Soviet citizens, including escaped or deserted Georgians, Russians, and Tartar units of the Wehrmacht, laborers who served in the Todt military engineering organization, and units of Vlassov's Russian Liberation Army who also became feared in Poitiers and the region of Limoges for their disorderly and violent conduct.<sup>77</sup> Nor were the Indians the only foreigners to become targets of summary retribution at the hands of the French resistance. A number of Georgians who had served in the German military and served as jailers in the coastal town of Vannes were executed for brutalities they committed, including alleged acts of castration.<sup>78</sup>

Secondly, while German accounts of the Legion's retreat emphasizing the orderly courts-martial of Indians for rape and reports of General Elster's compensation to the local population for atrocities might suggest that the German officers did their utmost to control unruly

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<sup>77</sup> Megan, Koreman. *The Expectation of Justice: France, 1944-1946*. (Durham, NC: Duke University Press, 1999), 72.

<sup>78</sup> Robert Aron. *France Reborn*, 137-139.

and undisciplined legionaries, the terrible German atrocities against hostages and civilians did more than anything to set the stage for the violent acts of retribution by the resistance in the fall of 1944 and the spring of 1945. For, example, when the inhabitants in Angoulême and Châteauroux, or elsewhere on the roads east of Poitiers faced the violence of the passing Indian legionaries at the end of August and in early September, only a few months had passed since the wholesale massacre by German soldiers of over six hundred villagers, including women and children, in Oradour-sur-glane on 10 June, 1944, located in the neighboring department of Haute-Vienne. Koch-Grünberg and Ernst Bannerth may have been spared the fate of their fellow Indian deserters in Poitiers, but elsewhere German soldiers were summarily shot by the resistance, as were French militia forces who engaged them in what amounted to a civil war across the French countryside.

Another factor is the importance of local circumstances. The scale of retribution differed significantly according to the state of German retreat, local sympathies towards the Vichy regime, the power of local resistance groups, and strength of the authority of commissioners despatched by the new Republican government. There are no reliable statistics for summary executions and considerable debate over their scale throughout France, but even when considering only the special courts or “Cour de Justice” set up to try collaboration following a June, 1944 ordinance, the Poitiers judicial district handed down 272 death sentences; the highest number of death sentences in France not given in absentia.<sup>79</sup> Poitiers was a particularly troubled site of conflict between contending resistance forces, who flowed into the town after its liberation in early September, and the assigned

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<sup>79</sup> Poitiers judicial district included the departments of Vienne, Deux-Sèvres, Vendée, and Charente-Maritime. Paris came in second at 241 death sentences in the presence of the defendant. Other judicial districts handed down many hundreds of death sentences in absentia. Poitiers was 4th among judicial districts in terms of life sentences handed out, behind Paris, Riom, and Lyon. Peter Novick. *The Resistance Versus Vichy: The Purge of Collaborators in Liberated France*. (London: Chatto & Windus, 1968), 218.

commissaire Jean Schuhler.<sup>80</sup> Visiting Angoulême, Schuhler found that “arrests were made without rhyme or reason...”<sup>81</sup> When he attempted to transfer Colonel Fourrier, the commanding military officer who Major de Gale had negotiated with over the fate of Indian prisoners, out of the department in December, 1944, a demonstration starting from the square where the legionaries were executed on September 22 marched to the prefecture and broke into the building.<sup>82</sup>

In this environment of casual violence by armed groups or isolated units, burning hatreds against war criminals, collaborators, as well as any unfortunate captured enemy could mix freely and without great distinction. If the attempt to punish the violent crimes of war by the Indian National Army or other Indian collaborators became intricately tied to an explosive politics of treason in the British Empire, the experience of the Indian Legion in France offered no alternative model to follow: the execution of several dozen Indians in the towns of central France was carried out in the worst possible context for transitional justice, lacking anything resembling a fair judicial process.

This chapter has argued that British policies towards the Indian National Army in India contributed to the weakening of an already nearly crippled retribution process in Southeast Asia. Taken as a whole, however, considering the differing contexts and fates of “Indian renegades” beyond the subcontinent reminds us that the varying scale and nature of violence during the war varied as much as its relationship between the politics of betrayal and retribution for violence in the postwar response. In the case of the former, one important contrast is between the conduct of armies in the battlefield and security forces maintaining occupations or managing prisoner of war camps. However, the relationship with the local population was just as important. Both the INA and the

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<sup>80</sup> “The Commissaires Challenged by Resistants: Toulouse and Poitiers.” *The Journal of Modern History*, 53 no. 1, 1108-9.

<sup>81</sup> Letter by Schuhler from archives of Jean Schuhler quoted in *ibid.*, 1109.

<sup>82</sup> *Ibid.*, 1112.

Indian Legion faced their greatest challenge during long retreats, but the latter was a demoralized force in an overwhelmingly hostile environment. These different contexts are also important when considering post-conflict responses. If the political dimension introduced by the crime of treason led to explosive results in India, it further muffled any attempt to reckon with violence in Southeast Asia. And as the case of the executions in France suggest, summary courts in the field were anything but a just alternative.

## **Chapter 4: Confronting Treason and Atrocities in Burma, 1944-1946**

We have seen that policies towards the Indian National Army within the Raj gradually evolve into one that punished only treasonous atrocities. We have also seen this policy extend to all collaborator cases in Hong Kong, Malaya, Singapore and British Borneo. These shifts came at a high cost with very little to show for it. In India the few cases which came to trial were widely perceived as the petty political maneuvering of a dying empire, while the developing focus upon wartime brutality, as opposed to treason, by the spring of 1946 did not result in any significant intensification of efforts to achieve a reckoning with the violent consequences of wartime military and police collaboration in British territories under Japanese occupation.

Burma was also under control of a British Military Administration during the period of transition at the close of the war but there are a number of features that set it apart from the experience of other British domains in Southeast Asia. Unlike any other place the British Empire returned to, in Burma colonial officials had to face a full fledged Burma National Army (BNA), raised and trained with the help of the Japanese military. Instead of a defeated and discredited force, the BNA reversed its loyalties at the last minute to fight against the Japanese and join the victory parade in Rangoon. Also, Burma had served as an active battleground for most of the war and the opposing forces exacerbated existing ethnic tensions as they sought local support. The returning British faced a battered colony after the war, but one in which local nationalist sentiment had been boosted by the nominal independence awarded it under the Japanese in 1943. The important role of the BNA and its leaders, both as a threat to reestablishing British rule and as potential partners in the creation of a newly independent Burma, made the question of retribution for military collaborators particularly vexing.



The case of Burma is also made more complex because, though a British colony, was not merely the British military and returning colonial officials who determined the fate of its “renegades.” Only at Normandy did the Allies launch a counterattack with a greater variety of forces than were deployed in the jungles of Burma. As the Japanese Imperial Army slowly retreated in the course of the late 1944 and 1945, it faced Allied armies composed of more than half dozen different origins and ethnicities. Indians fought side by side with British soldiers and officers of the Indian Army. Various ethnic groups within Burma fought in guerrilla units under British and American command. In the vast northern interior it was American soldiers and officers fighting together with tens of thousands of Chinese soldiers who pushed the Japanese to the south and southeast. Unsurprisingly, in these areas the Americans and Chinese would help determine the fate of many of those who aided the Japanese. Agents of the U.S. Counter-intelligence Corps (CIC) actively arrested and sometimes even executed local collaborators, treating them as both threats to security, and as individuals guilty of illegitimate violence. These CIC agents were not concerned with acts of treason as such but with ongoing threats to Allied progress in the war, and with past acts which in most contexts would simply be called war crimes.

By contrast, for the returning British administration, the issue of military collaboration was, above all, a political problem. This was especially true after Japanese surrender. As challenges mounted in Burma during the course of 1946, the scope of all investigations and trials for wartime treason and other crimes committed by colonial subjects under Japanese occupation rapidly narrowed. Ultimately, however, when all cases of “simple collaboration” had been dropped and prosecutions only retained for those involving torture or resulting in death, it was found that they still inconveniently included the most important Burmese political figure of the early postwar period, Aung San. Facing the risk of losing an important stabilizing partner and with him, the best prospect

for a peaceful end to British rule in Burma, a new approach to punishing wartime crimes in Burma was adopted. In July, 1946, just as Rangoon-based war crimes trials against the Japanese were picking up their pace, the acting governor for Burma issued a decree which not only prevented the trial of Aung San, but effectively brought an end to all proceedings against Burmese accused of wartime treason and atrocities.

*Japan's Burmese Armies and the Indian National Army*

The Japanese trained Burma Independence Army, later reorganized as the Burma Defense Army and once again renamed the Burma National Army, has received less attention than the more famous Indian National Army, but it played a more significant military role during the war, both during Japan's invasion of Burma at the opening of the campaign in 1942 and, more spectacularly, when it turned on its master in the final months of Japan's retreat in 1945. Like the Indian National Army, the Burmese forces that fought for the Japanese, and then later against them, also left an important postwar legacy. When the British attempted to reestablish control in Burma, the existence of thousands of Burmese soldiers, including hundreds of well trained officers, played an important part of every major political calculation that led up to Burmese independence in January, 1948. Its leading officers went on to play central roles in almost all the violent shifts in political power that followed, well into the 1960s.

In Burma, as in India, the British Empire's frustrations with its treasonous subjects led to debates over how to punish the guilty without aggravating the empire's already precarious position. As in India, the question of how and who to target began as one dominated by the issue of treason, was gradually reduced to focus on traitors who were guilty of war crimes, and then shifted to examining

only the war crimes of a single class of military collaborators. In both cases the British faced the awkward question of punishing traitors in colonies that were seen as rapidly approaching a period of self-rule, if not complete independence. In both cases the pragmatic and utilitarian instincts among British military and colonial officials prevailed over the rule of law or any desire for retribution against traitors or the violent crimes they may have committed.

There are, however, at least two important differences between the Indian and Burmese cases. While Subhas Chandra Bose's Indian National Army suffered an increasing number of desertions during the course of the Japanese retreat, for the most part it continued to fight with its Japanese allies through to the final defeat. By contrast, the Burma National Army rose up against the Japanese in the spring of 1945 and hastened Japan's expulsion from Burma. As Japanese casualties at the hands of the Burma National Army mounted, there was an increasing consensus that these forces had, in a phrase often used in official British correspondence, "worked their passage home," and thus removed the stain of collaboration.

A second difference is at least partly attributable to the impact of one case upon the other. As it debated the question of wartime military collaboration in Burma, British officials never let the similar case of the Indian National Army stray far from their mind. In both India and Burma the British government attempted to make a clean distinction between those who were merely guilty of treason or of waging war against the King, an offense for which, as we have seen, the death sentence had in some cases already been carried out during the war, and those who were additionally guilty of wartime atrocities.<sup>1</sup> In India, however, the British finally moved forward with some prosecutions, if

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<sup>1</sup> A third difference that might be noted with regards to the specific nature of the treason in question is that, while the INA was composed in large part of deserters, which thus stood in strong contrast to loyal Indians who continue to fight for the British throughout the war, there were few Burmese veterans of British forces within the BNA, not surprising given the fact the British rarely recruited among ethnic Burmans. See Annexure III in "Cabinet: India and Burma Committee. Paper I. B. (45) 16" No. 297 (October 20, 1945) IOR: L/WS/1/1577 in Hugh Tinker, ed. *Burma*:

only against a few men, in the “Red Fort trials” from late 1945 to early 1946. The unified opposition within India engendered by these trials and the violence they sparked were noted carefully by government officials who feared any escalation of political violence in Burma. The final decisions on the Burmese cases were taken at the time these events were unfolding in India and thus had a very direct impact for two reasons. Violence like that which broke out in India was predicted for Burma as well. Perhaps more importantly, the substantially weakened British rule in Burma had been for many decades heavily dependent upon the use of Indian troops, whose loyalty was now more than ever in doubt.

### *Burmese Military Collaboration*

Unlike most other Southeast Asian cases, Japanese sponsorship and training of Burmese military forces began even before its rapid Southern advance.<sup>2</sup> The earliest such plans were developed by officers of the Japanese Navy General Staff in 1940 but led to concrete action under the supervision of army Colonel Suzuki Keiji (鈴木敬司) and his newly formed intelligence organization, the *Minami Kikan* (南機関), in February, 1941.<sup>3</sup> Thirty Burmese of the Thakin group of student nationalists

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*The Struggle for Independence 1944-1948: Documents from official and private sources* vol. 1 (London: Her Majesty's Stationary Office, 1982), 509. Hereafter cited as *BSI*.

<sup>2</sup> The only other example of pre-Southern Advance Japanese sponsorship of military forces in Southeast Asia I have come across is the arming and training of perhaps 2,000 Vietnamese refugees in Guangzhou into an "Army for the Reconstruction of Viet-nam" which survived only long enough to launch a failed attack on the French forces in September 1940. Their leader, Tran Trung Lap was executed by the French. See Chieu, Vu Ngu. "The Other Side of the 1945 Vietnamese Revolution: The Empire of Viet-Nam (March-August 1945)" *The Journal of Asian Studies* 45(2) (1986): 299.

<sup>3</sup> Already before this Suzuki had traveled to Burma in 1940 to contact Burmese nationalists. For more on the rise and fall of the Minami Kikan see Tatsurō Izumiya, *The Minami Organ* (Rangoon: Translation and Publications Dept., Higher Education Dept, 1985).

received military training from Japanese Naval officers in occupied Hainan.<sup>4</sup> These famous “Thirty Comrades,” as they became known, including the leading military figure Aung San, would become the core of a Burma Independence Army (BIA), which was formally established in December, on the eve of the Pacific War.

The BIA was divided into four groups, including one led by Colonel Suzuki and an interior sabotage group under Ne Win, who would go on to become Burma’s longest ruling military dictator in the postwar period.<sup>5</sup> The BIA expanded rapidly and organically in the early stages of the Japanese campaign into Burma in 1942 and it helped to rapidly consolidate control in rural areas. One leading Burmese Communist, Thein Pe Myint, records the growth of one of the more famous units, under Bo Yan Naing, which left Bangkok with 24 men, grew to a force of 900 when it left Mergui, and had 1,200 soldiers when it reached its first significant battle at Shwedaung.<sup>6</sup> Estimates of total numbers vary widely, and are complicated by the relative lack of Japanese control over membership in the earliest stage. The detailed study of the Japanese occupation of Burma by Ōta Tsunezō (太田常蔵) estimates that, at the occupation of Rangoon, the BIA numbered only around 10,000 regular forces, but that it grew to be supplemented by as many as 100,000 irregular militia.<sup>7</sup>

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<sup>4</sup> Lebra-Chapman, Joyce, *Japanese-Trained Armies in Southeast Asia: Independence and Volunteer Forces in World War II* (New York: Columbia University Press, 1977), 54-6.

<sup>5</sup> For more detail on the path of the four groups, see 緬甸工作に関する件 [On the Burma Operation] JACAR (Ajia rekishi shiryō sentaa) Ref. C01000661500 (6 Sept., 1942) <http://www.jacar.go.jp/> and Nicholas Tarling, *A Sudden Rampage: the Japanese Occupation of Southeast Asia, 1941-1945*. (Honolulu: University of Hawaii Press, 2001), 151.

<sup>6</sup> Thein Pe Myint, “Wartime Traveler” Robert H. Taylor trans. in Robert H. Taylor *Marxism and Resistance in Burma, 1942-1945*. (Athens: Ohio University Press, 1984), 129.

<sup>7</sup> Tsunezō Ōta 太田常蔵 ビルマにおける日本軍政史の研究 [A Study of the History of Japanese Military Rule in Burma] (Tokyo: Yoshikawa Kōbunkan, 1967), 45. Lebra, *Japanese-Trained Armies*, 15. Estimates of the size of the BIA in 1942 vary widely. Dorothy Guyot suggests 23,000. Dorothy Guyot “The Burma Independence Army: A Political Movement in Military Garb” in Josef Silverstein, ed. *Southeast Asia in World War II; Four Essays* (New Haven: Southeast Asia Studies, Yale University, 1966), 62 note 4. One early postwar source suggests 4,000 B.I.A. members around the capture of Rangoon, with 20-30,000 in the whole of Burma. Ian Morrison. *Grandfather*

The rapid expansion of its irregular forces to include many Burmese without any training and hardly any equipment helps explain Ian Morrison's comment, writing in 1947 that, "The term B.I.A. suggests an army. In reality it was little more than a horde of undisciplined riff-raff."<sup>8</sup> Everywhere the new Burmese army advanced, they established local administrations, though this appears to have been the result of a mix of direct BIA initiatives and local groups who wished to find new legitimacy for their power. As Thein Pe Myint describes the phenomenon,

Some Thakins in the districts were more eager to be appointed administrators and presidents of peace committees than to carry a rifle and join the march. Everywhere the BIA column passed through, the local Thakins would generally ask for power and authority to rule, to reign, to strut and swagger with pearl-handled pistols dangling from their puny waists, to settle their old personal scores, to set up their own mean little kingdoms.<sup>9</sup>

These Burmese forces did not play any significant role in the major military operations of the initial campaign against the British and Chinese forces in Burma, given the Japanese 15th and Southern Army's lack of faith in their fighting capabilities. In fact, direct clashes between the Japanese military and its Burmese allies began almost immediately, with BIA forces marching north on the west bank of the Irrawaddy river fighting two major battles with Japanese forces of the 55th Division.<sup>10</sup> Tensions between Imperial Army commanders who found them an annoyance and Colonel Suzuki, who believed in their capacity to grow into their role as a national army, deepened as the latter pressed for rapid Burmese independence. The Minami Kikan was dissolved and the Colonel

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*Longlegs; the Life and Gallant Death of Major H. P. Seagrim.* (London: Faber and Faber, 1947), 68. Former Burma National Army officer who graduated from the officer school in 1945, Maung Maung, estimated 50,000. Robert H. Taylor, (U) Maung Maun. *Dr. Maung Maung: Gentleman, Scholar, Patriot.* (Singapore: Institute of Southeast Asian Studies, 2008), 104. On the high end, Joyce Lebra cites 200,000 as one estimate of the size of the BIA within weeks of Japanese entry into the war but gives no source. Lebra, *Japanese-Trained Armies*, 65.

<sup>8</sup> Morrison, Ian. *Grandfather Longlegs; the Life and Gallant Death of Major H. P. Seagrim.* (London: Faber and Faber, 1947), 69.

<sup>9</sup> Thein Pe Myint "Wartime Traveler," 175.

<sup>10</sup> Maung, Maung. *Burmese Nationalist Movements, 1940-1948.* (Edinburgh: Kiscadale, 1989), 42-43.

sent back to Japan in July, 1942. The unruly size of the BIA, its relative independence from Japanese control, and the removal of its most fervent supporter Suzuki from the scene contributed to the rapid dissolution of the BIA by the Japanese 15th Army and the reorganization of some of its members into a smaller Burma Defense Army (BDA). Its guiding principles were that it was to be “under the command” of the Japanese military and that it would focus on guarding border regions and “concentrate themselves in drilling and equipping.”<sup>11</sup> This new force was better trained but not permitted to conduct any military operations without approval of Japanese officers that were assigned to its units.<sup>12</sup> Following the declaration of Burma's independence in August 1943, this BDA was in turn reorganized into a Burma National Army (BNA) with Aung San occupying the positions of commander and later as Minister of Defense.<sup>13</sup>

As was the case in most Japanese controlled territories, Japanese military as well as diplomatic foreign policies regarding the nationalist aspirations of the Burmese were completely lacking in consistency for much of the war.<sup>14</sup> This led to considerable distrust and frustration on the part of nationalists collaborating with Japan already by the end of 1941. The decision to finally grant a nominal independence for Burma and the Philippines, announced by Prime Minister Tōjō Hideki (東条英機) in late January 1943, was made as the Japanese Empire shifted to a defensive strategy and was motivated by the need to regain the support of disenchanted Burmese nationalists.<sup>15</sup> It came at a

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<sup>11</sup> Document No. 25 “Summary of the Establishment of the Burma Defense Army” in Frank N. Trager *Burma: Japanese Military Administration, Selected Documents, 1941-1945*. (Philadelphia: University of Pennsylvania Press, 1971), 105.

<sup>12</sup> Ōta, ビルマにおける日本軍政史の研究, 346.

<sup>13</sup> While Aung San was the head of the BIA, BDA and BNA in turn, his power in Japanese occupied Burma was shared with the head of the civilian administration, and eventually Prime Minister, Ba Maw.

<sup>14</sup> Lebra *Japanese-Trained Armies*, 43-5.

<sup>15</sup> Won Z Yoon, “Military Expediency: A Determining Factor in the Japanese Policy regarding Burmese Independence.” *Journal of Southeast Asian Studies* 9(2) (1978): 260.

time when final Japanese evacuation from Guadalcanal had begun, and a first failed Allied counter-offensive had begun in Burma.

The granting of independence failed to stem the gradual decline in trust and confidence among the Burmese. Nor did the training and reorganization of Burmese military forces in a newly established Officers' Training School at Mingaladon by the Japanese army lead to any meaningful commitment of these forces on the front, even as the war turned decisively against the Japanese within Burma. During the final daring push by the Japanese in the Imphal campaign of the spring of 1944, Burmese Premier Ba Maw claimed to have complained that, while Indian National Army forces were actively used in the Japanese advance, the BNA was not given any chance to win glory.<sup>16</sup> According to his account, it was recommended that he keep the Burmese army busy by, "holding parades now and then."<sup>17</sup>

With the exception of a few minor battles, the Japanese trained Burmese National Army did not, then, ever get to truly test itself against the colonial power it was born to fight. The development of the wartime BIA, BDA and BNA, did however, have a profound transformative impact on the development of a Burmese national society. While minority ethnic groups in the colony widely served in police units under the British, the Japanese armies drew upon a state and military apparatus of elites who possessed a broader range of skills.<sup>18</sup> BIA soldiers were stationed across the country in villages that had little or no connection to a national whole, and villagers were exposed to an

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<sup>16</sup> Lebra, *Japanese-Trained Armies*, 73-4. U. Ba Maw, *Breakthrough in Burma: Memoirs of a Revolution, 1939-1946* (New Haven: Yale University Press, 1968), 369. Many of the Indian National Army were well-trained former British army troops who had been recruited from POW camps.

<sup>17</sup> Ba Maw *ibid.*, 370. Won Z. Yoon writes that Ba Maw claims that Aung San was able to deploy BNA troops to the front after securing Japanese agreement in November, 1944, but I am unable to locate the passage he cites. Yoon "Military Expediency," 265.

<sup>18</sup> Lebra, *Japanese-Trained Armies*, 16.



emerging national idiom and propaganda of a Burmese or Myanmar nation.<sup>19</sup> According to one sample, during its period of greatest autonomy in the spring of 1942, the BIA appointed three quarters of the local administrators in district headquarters, with the remainder appointed by Japanese or composed of local elders.<sup>20</sup> Even in the increasingly desperate days of 1944, the army drew in enthusiastic recruits from among village youths who were provided with clothing and food, as well as access to a national commodity procurement system that linked cities and countryside in a new economic network.<sup>21</sup> Finally, the first Thirty Comrades who founded the BIA and some of the other officers to emerge from the Mingaladon training school would form the core of Burma's postwar political and military elites.

### *The BIA and Ethnic Violence*

These national legacies of a Japanese sponsored military force that was predominantly made up of ethnic Burman (Bamar) soldiers were marred by terrible ethnic violence. Atrocities began with the establishment of BIA military control in areas where other minority groups had long held sway. With the withdrawal of British troops from the ethnic Karen (Kayin) dominated southeast of Burma, the newly formed BIA clashed early and often with armed local Karen forces in the spring of 1942. The Karen, prized by the British as allies in arms in the Anglo-Burman wars and later as colonial police, were targeted by the BIA as sympathizers of the old empire and for refusing to give up arms provided

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<sup>19</sup> Christopher Bayly and Tim Harper, *Forgotten Armies: The Fall of British Asia, 1941-1945* (Cambridge, Mass: Harvard University Press, 2005), 371. The move to support Burmese as a recognized official language received an important boost from various efforts by Ba Maw beginning in 1943. Kei Nemoto 根本敬, 抵抗と協力のはざま : 近代ビルマ史のなかのイギリスと日本 [Between Resistance and Collaboration: England and Japan in Modern Burma] (Tōkyō: Iwanami Shoten, 2010), 69-70.

<sup>20</sup> Guyot, "Burma Independence Army," 56.

<sup>21</sup> Bayly and Harper, *Forgotten Armies*, 400.

them by the British.<sup>22</sup> The military landscape of Burma was radically transformed not merely because of the arrival of the Japanese and the departure of the British but because of the expansion in power of armed ethnic Burmans throughout minority districts. As Robert H. Taylor has shown in his study of colonial forces in the colony, in 1931 ethnic Burmans made up barely more a tenth of colonial levies despite composing three quarters of the population.<sup>23</sup> Minorities such as the Karen, valued for their “martial” prowess, were now faced with thousands of Burman soldiers demanding their weapons and establishing control over their communities. Escalating violence between BIA and Karen armed forces eventually led in May, 1942 to massacres of civilians by both sides.<sup>24</sup> Even a sympathetic former officer in the later BNA, Maung Maung, was willing to concede that, “Many of those who took over towns in the name of the B.I.A. had no knowledge or experience of administration, the result was a serious loss of reputation for the B.I.A.” The disputes only declined in 1943 following measures taken, depending on which source you believe, by Ba Maw, by Karen leaders, or by a frustrated Japanese military which attempted to meet some Karen demands.<sup>25</sup>

While local acts of violence by military collaborators against civilians, or collaboration with Japan’s notorious military police may have sufficed as targets for postwar trials, the powerful ethnic dimension of the 1942 massacres complicated the issue. After Japanese surrender, while elements of what was once the BIA was being merged with the Burmese Army in September 1945, a bitter

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<sup>22</sup> Paul H. Kratoska, ed. *Southeast Asian Minorities in the Wartime Japanese Empire*. (London: Routledge, 2002), 21. Martin J Smith, *Burma: Insurgency and the Politics of Ethnicity*, 2nd ed., (Dhaka: University Press, 1999), 62-3. Others, including the Kachin and the Chin minorities also faced hardship for their continued support of the British.

<sup>23</sup> Robert H. Taylor “Colonial Forces in British Burma” in Karl Hack and Tobias Rettig eds. *Colonial armies in Southeast Asia*. (London: Routledge, 2006), 199.

<sup>24</sup> Kratoska, *Southeast Asian Minorities*, 27.

<sup>25</sup> Accounts of how the violence began and ended vary significantly. See Morrison *Grandfather Longlegs* 69-87, Ba Maw *Breakthrough* 179-198, and Robert H. Taylor “The Legacies of World War II for Myanmar” in David Hock, ed., *Legacies of World War II in South and East Asia*. (Singapore: Institute of Southeast Asian Studies, 2007), 64-67.

memorial sent by a group of Karen leaders to the Secretary of State for India and Burma, Leopold Amery, reminded the British of the unwavering wartime loyalty of the Karens and detailed what they had suffered at the hands of Japanese sponsored forces,

While Burma was under the military administration of the Burma Independent Army... they branded the Karens as rebels, and persecuted and tortured them in all possible ways and in certain districts resorted to wholesale massacre, not even leaving babies, and set the Karen villages on fire. In Myaungmya District alone, the Official Report reveals that about 400 villages were set on fire in this way, and more than 1,800 Karens were slaughtered...Karens of the Salween Hill District, Papun, fared worse. All of the leading men were slaughtered, and their wives and daughters before being massacred were subjected to a moral degradation in the presence of their husbands and fathers...At that time no influential Burmese leader raised his hand and called a halt to such senseless massacre. Were it not for the timely intervention of the Nippon Imperial Armies, we could not imagine how far the matter would have gone.<sup>26</sup>

The violence between the Burmese dominated military and local Karen militia would break out again following independence in 1948, and develop into a full scale Karen uprising in 1949.<sup>27</sup> Through the decades of postwar insurgency, the Burmese Army, called the Tatmadaw, and state propaganda has continued to remind the people of the “treasonous” Karen collaboration with the British empire. As late as 1984 all brigade commanders and brigadiers of the Karen National Liberation Army had served in wartime British supported units, as did, briefly, its main postwar leader until 2004, Saw Bo Mya. For their part, Karen insurgents have accused the Burmese military of having learnt its brutal counter-insurgency strategies from Japan.<sup>28</sup>

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<sup>26</sup> "The Humble Memorial of the Karens of Burma to His Britannic Majesty's Secretary of State for Burma" No. 286 IOR: M/4/3023 (26 Sept. 1945), BSI 494.

<sup>27</sup> Smith *Burma: Insurgency*, 111, 118-9. Kratoska, *Southeast Asian Minorities*, 34.

<sup>28</sup> On KNLA backgrounds, Smith *Burma: Insurgency*, 93. An example state propaganda emphasizing the colonial collaboration of the Karen see Yebaw Thit Maung "The KNU insurgents - (1) Conditions before Independence" in the government supported daily, *The Working People's Daily Collected Articles* 1 (News and Periodicals Corporation, 1988): 104. Also Martin Smith "Army Politics as a Historical Legacy: The Experience of Burma" in Kees Koonings and Dirk Kruijt eds., *Political Armies: the Military and Nation Building in the Age of Democracy* (London:

In post-independence Burma, the Japanese trained and armed Burma National Army has not, however, been remembered most for its attempt to repel its British colonial overlord, as in the case of the Indian National Army, nor has it mainly been associated with Japanese atrocities, as were the pro-Japanese Makapili forces in the Philippines. Instead, in national historical memory, the Burma National Army is known for the moment it turned against its Japanese maker: the uprising of March 27, 1945. This national rebellion against the retreating Japanese forces within Burma was the result of cooperation between Burmese communists, other resistance organizations and officers of the BNA, operating with the approval of Aung San and dating back to at least mid-1944. The coalition of forces coordinated their efforts under the umbrella of an “Anti-Fascist People's Freedom League” (AFPFL) and complemented existing BNA armaments with new weapons supplied by Allied special forces known as Force 136.<sup>29</sup> At the time of revolt, the BNA was a modest sized army of around 11,000 but it led the attack on the Japanese Imperial Army in Rangoon.<sup>30</sup> Communist sources claim that forces under the command of the Burmese Communist Party comprised of around 40,000 and were responsible for fully half of the Japanese casualties during the uprising, but both in postwar negotiations with the British and in Burmese commemorations in the post-independence period, it is the better armed and trained BNA and Aung San's leadership which has been most highlighted.<sup>31</sup>

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Zed Books, 2002), 293 note 19. Interestingly, the upper half of the ensign of the KNLA appears identical to that of the wartime Japanese wartime imperial army.

<sup>29</sup> A detailed account of the rise of the AFPFL can be found in Jan Bečka. “The National Liberation Movement in Burma During the Japanese Occupation Period, 1941-1945” *Dissertationes orientales* vol. 42. (Prague: Oriental Institute in Academia, 1983), 166-180. A recent account of the rebellion can be found in Bayly and Harper, *Forgotten Armies*, 429-434.

<sup>30</sup> U Ba Than, *The Roots of the Revolution: a Brief History of the Defence Services of the Union of Burma and the Ideals for Which They Stand* (Director of Information, 1962), 44.

<sup>31</sup> On the relative importance of the Communist forces see Bečka, *The National Liberation Movement in Burma During the Japanese Occupation Period, 1941-1945*, *Dissertationes orientales* vol. 42 (Prague: Oriental Institute in Academia, 1983), 240.

From the perspective of Allied forces advancing into Burma in the Spring of 1945, both leading up to the rebellion and in its early aftermath, responses to military collaboration with Japan, and more broadly, those who served in any government capacity during the Japanese occupation ranged from continued hatred of what were considered treasonous subjects to a more tolerant understanding that acknowledged the strong nationalist yearnings of “politically active Burmans.” Until Japanese surrender, however, the British military was not alone in determining the fate of these forces.

### *The Counter-Intelligence Corps in Burma*

While British forces faced off against the Japanese on the borderlands between Burma and India, tens of thousands of Chinese Nationalist government soldiers, along with a much smaller number of American troops, were organized into a Northern Combat Area Command (NCAC). From the limited gains of 1943 to the final drive across Burma in 1945, the NCAC comprised the bulk of regular military forces that fought against the Japanese on the northern Burmese front. These forces served first under General Joseph Stilwell and, after his recall by President Roosevelt in October, 1944, Burma based forces were transferred to the control of General Daniel Sultan. The Chinese forces included both expeditionary forces from western Yunnan province, joined by units such as the powerful New 38th Division that had earlier retreated into India under the command of one of China’s most accomplished wartime commanders, Sun Liren. The Chinese and American forces contributed in two important ways to the campaigns in Burma. Their push south permitted the creation of a new land route from India to China known as the Ledo Road and, following the completion of the route and until the dismantlement of NCAC in April, the Chinese troops supported the main British drive by pursuing retreating Japanese forces south.

This remarkable coordination of US and Chinese military efforts over a span of several years is remembered mostly for the bitter disagreements and tensions emerging from the relationship between General Stilwell, Chiang Kai-shek, and other Chinese commanders.<sup>32</sup> Chinese language studies of the challenges of the campaigns in northern Burma, which also have much to say about Stilwell's shortcomings, have benefitted from a strong renewal of interest in this theater of the war over the past few years.<sup>33</sup> These works understandably appreciate the campaigns for the rare contrast they present with the otherwise frustratingly stagnant Sino-Japanese conflict: an example of well-trained Chinese divisions capturing large expanses of territory while pushing back a steadily retreating Japanese foe. Very little is said or known, however, about the relationship between Chinese forces and the local populations of northern Burma from 1944 until the transfer of most Chinese forces back to China in April, 1945.<sup>34</sup> It is thus difficult to say what Chinese policy was towards Burmese civilian or military collaborators, referred to as *mianjian* (緬奸) in Chinese accounts, in areas captured by Chinese forces. While technically under US command at the strategic level, their numbers dwarfed those of the Americans and the operational independence of Chinese units was significant. This partially explains why Chinese scholarship on the campaigns barely mentions the Americans when following the day-to-day progress of the campaign. From October, 1944, wherever the Chinese forces advanced in northern Burma, so too did the United States Counter-Intelligence

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<sup>32</sup> Frank Dorn *Walkout with Stilwell in Burma*. New York: Thomas Y. Crowell, 1971. Charles F. Romanus and Riley Sunderland. *U.S. Army in World War II: The China-Burma-India Theater*. 3 vols. Washington, DC: Office of the Chief of Military History, Department of the Army, 1953–1959. Barbara Tuchman. *Stilwell and the American Experience in China, 1911–1945*. New York: Macmillan, 1970.

<sup>33</sup> For example, the recent three volume series. Lu Jiefeng 盧潔峰 ed., 中國駐印軍印緬抗戰 [The Chinese Army in India: The India-Burma War of Resistance], 3 vols. (Tuanjie chubanshe, 2009).

<sup>34</sup> Scholars have had occasion to note Chinese interactions with Burmese in 1942 and 1943 in the Shan states, including accusations of “animal” like behavior of the Chinese 96th division as it retreated in the wake of the 1942 Japanese invasion of Burma. See Lathrop, Alan K. “The Employment of Chinese Nationalist Troops in the First Burma Campaign.” *Journal of Asian Studies*. 12, no. 2 (September 22, 1981): 426.

Corps (CIC), which took as one of its primary missions the apprehension, detention and, in at least some cases, the execution of Japan's local collaborators. In New Guinea, the Philippines, and later in both occupied Japan and Korea, the CIC operated in unit detachments that functioned relatively independently. In Burma, they operated as a single unit under the overall command of US Army military intelligence, G2. Most of the agents were in turn divided up into five highly mobile interrogation teams (CITs) of two to four agents joined by interpreters or other locally employed assistants that followed closely behind the attacking Chinese troops.<sup>35</sup>

This small number of CIC interrogation teams moved into recently captured territory and collected enemy documents for analysis, identified security threats and suspected spies, but also actively sought out anyone who was known to have collaborated actively with the Japanese occupation. It was especially interested in apprehending collaborators suspected of being indirectly or directly responsible for violence against Allied troops. To accomplish this, they implemented a black and white classification system not unlike that employed by the British military for captured Indian National Army members. Instead of limiting the classification to military collaborators, however, the CIC moved into Burmese towns and villages and set about compiling a "white" and "black" list for the civilian population at large, distinguishing trustworthy local contacts from enemy collaborators and agents to be surveilled or arrested.<sup>36</sup>

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<sup>35</sup> James L. Gilbert, John P. Finnegan, and Ann Bray. *In the Shadow of the Sphinx: A History of Army Counterintelligence*. (Dept. of the Army, 2005), 72. Chinese forces also had intelligence officers active on the Burmese front, referred to by their American equivalent as "G2 officers" when they make an appearance in the memoirs of the surgeon Gordon Seagrave, and these appear to have been engaged in at least some of the security tasks that were normally fulfilled by the United States Counter-Intelligence Corps. However, it is not clear if collaboration cases were within the scope of their activities. Gordon Stifler Seagrave. *Burma Surgeon Returns*. New York: W.W. Norton, 1946. Seagrave, who remained in Burma after its independence would himself be convicted of treason for assistance providing "aid and comfort" to Karen rebels. "Burma: Sea of Troubles" *Time* (Jan 29, 1951). The sentence was later overturned. "Burma: Final Verdict" *Time* (Nov 19, 1951).

<sup>36</sup> Gilbert *In the Shadow of the Sphinx*, 72.

The first interrogation team, including Thomas P. Wheeley and Edris Carr arrested a number of local collaborators with the Japanese in the Irawaddy port of Htigyaing (Tigyaing), including five Burmese of unidentified ethnicity who had ferried some British soldiers across a river, only to betray them to the Japanese upon arrival.<sup>37</sup> They also arrested and imprisoned a dozen women who were members of the nationalist Thakin League, for providing “aid and comfort” to the Japanese by procuring them supplies. In Moda Gyi village, not far from the town of Katha, where George Orwell had once served as a police officer, CIC officers arrested six members of a Japanese-trained raiding party that had engaged in sabotage, and collected evidence on another 40 collaborators it had arrested in February, 1945.<sup>38</sup> The team also arrested, tried and executed two locals for the capture and torture of Allied troops, including one Saung Swe and his subordinate.<sup>39</sup> The second interrogation team travelled through rural jungle terrain and remote villages in search of intelligence as well expand their list of suspected collaborators.<sup>40</sup> In Namhkan and Muse, CIC officers of the third interrogation team arrested 23 suspected collaborators and left them in jail before moving on.<sup>41</sup> The fifth interrogation unit, which included CIC agents James Lucas, Seymour Abeles, Joe Breechen, and Edmund Fong, moved together with the Chinese 50th Division. They set up an informant network as they went along, arrested 25 collaborator suspects in the span of just two weeks, and, “the local Indian Independence League kept them very busy.”<sup>42</sup>

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<sup>37</sup> Duval A Edwards, *Spy Catchers of the U.S. Army in the War with Japan: The Unfinished Story of the Counter Intelligence Corps* (Gig Harbor, WA: Red Apple Pub, 1994), 190. Ian Sayer, *America's Secret Army: The Untold Story of the Counter Intelligence Corps* (London: Grafton, 1989), 242.

<sup>38</sup> Duval *Spy Catchers*, 191.

<sup>39</sup> Sayer, *Secret Army*, 242.

<sup>40</sup> Ibid., 243.

<sup>41</sup> Ibid., 243, Duval, *Spy Catchers*, 191.

<sup>42</sup> Ibid., 193.



The fourth interrogation team, including agents Newland and Quon, arrived in Katha shortly after its surrender, but came into direct conflict with a British Civil Affairs team, also despatched to the town, over what policy to follow with regards to collaborators. According to the CIC agent perspective, the British wanted to handle cases of collaboration under “peacetime regulations,” while the CIC had a standing policy of imprisoning suspected collaborators until investigations were completed, which in reality often meant until the end of the war.<sup>43</sup> Though, without the British report on the same interaction, it is hard to tell what exactly transpired, the American evaluation is probably a mischaracterization of the differences in approach, given that special British wartime regulations for the apprehension of security threats had, as we have seen, resulted in thousands of individuals being detained in India and elsewhere until well after Japanese surrender.

The operation that finds the most frequent mention in works about CIC operations in the India-Burma-China theater, and the only one from Burma to make its way into the official history of Army Counter-Intelligence, is the capture of Sinwa Nawng, the *Duwa* or headman of the village of Kansi, about 150km northwest of Myitkyina.<sup>44</sup> The Kansi *Duwa* controlled the profitable jade mines in the area and became a bitter opponent of the British colonial administration following a disagreement over what proportion of jade profits should be turned over to the colonial government.<sup>45</sup> CIC agent Edmund Fong traveled for two weeks together with one Burmese inspector to reach the location in order to apprehend this single collaborator, who was suspected of having

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<sup>43</sup> Duval, *Spy Catchers*, 192.

<sup>44</sup> Gilbert, *In the Shadow of the Sphinx*, 72. Sayer, *Secret Army*, 242. Duval, *Spy Catchers*, 189-90.

<sup>45</sup> B. Fergusson, “Upper Burma, 1943-44.” *The Geographical Journal* 107:1/2 (1946), 7. This Sinwa Nawng should not be confused with the Sima [Sama] Duwa of the same name, Sinwa Nawng. The buddhist Sima *Duwa*, from the Kamaing area, also collaborated with the Japanese, was the Kachin signatory to the Panglong agreement, and head of the Kachin State from 1948 to 1953. The two figures ran against each other in parliamentary elections, with the Kansi *Duwa* losing. Edmund Ronald Leach, *Political Systems of Highland Burma; a Study of Kachin Social Structure*, London School of Economics. Monographs on Social Anthropology no. 44 (London: Athlone Press, 1970), 258.

captured 15 Burmese soldiers and one Lt. Stewart Walker, an American pilot, who he handed over to the Japanese military. On arriving in Kansi, Fong contacted a local Chinese liaison unit which refused to permit the arrest, insisting that Sinwa Nawng had been instrumental in securing food and labor for the occupying Chinese forces. Fong was only able to proceed to Myitkyina with the *Duwa*, later joined by another three collaborators picked up along the way, after deceiving their Chinese counterparts.<sup>46</sup>

The arrest of Kansi *Duwa* Sinwa Nawng is a fairly typical example of the kind of collaboration case of most interest to US forces. While the civilian population often bore the brunt of violence in the wartime occupations of the region, it was not the area of primary focus for CIC collaborator investigations. Instead, the arrest, torture, or execution of Allied personnel was of central importance and agents like Edmund Fong could justify the distances traveled and the deception of allied Chinese forces in the name arresting a collaborator in some measure responsible for the execution of a US pilot. In the early postwar period, when the focus of CIC activities shifted in Burma, as it did elsewhere, to gathering evidence for postwar war crimes trials, massacres and torture of the local Burmese population may have been given greater consideration. Violence or atrocities against civilians were the focus of more than half of some 40 war crimes trials against Japanese soldiers in Burma.<sup>47</sup> For example, the first Rangoon based war crimes trial, convened in March, 1946 involved a trial of over a dozen Japanese soldiers for the July, 1945 massacre of over six hundred civilians in the village of Kalagon.<sup>48</sup> However, while these Rangoon prosecutions for B and C category conventional war crimes may have included Korean and Taiwanese members of the Japanese armed forces, they

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<sup>46</sup> Duval, *Spy Catchers*, 190.

<sup>47</sup> List of cases and sentences for the Rangoon trials in Chaen BC級戦犯英軍裁判資料, vol. 1, 100-109.

<sup>48</sup> Ibid., 100. Arujunan Narayanan "Japanese Atrocities and British Minor War Crimes Trials After World War II In the East" *Jebat Malaysian Journal of History* 33 (2006), 1-28.

did not include Burmese military collaborators, or local military police auxiliaries who may have been complicit in crimes against the civilian population.<sup>49</sup>

The execution of Saung Swe and his subordinate, as well as occasional references to the trial and execution of spies in the European theater in CIC histories shows that it did have the authority to carry out its own field trials and punish of those it detained. In the Philippines we shall see that the CIC detained thousands of collaborators until the conclusion of hostilities and then either released them or turned them over to the custody of the Philippine judiciary for treason prosecutions. In Burma, it is likely that any collaborators still under detention at Japan's surrender, or even earlier with the winding down of American operations in northern Burma, were either released or turned over to the British military administration. We shall see that the British prosecuted very few of these cases. After the considerable trouble the CIC went through to apprehend him, the "notorious collaborator," the Kansi *Duwa* Sinwa Nawng, reappears in the postwar period as a candidate in the elections for the Kachin State in 1951, running against the standing president of the Kachin State who, confusingly, both bears his same name and was also among the few Kachins to actively collaborate with the Japanese wartime administration, the Sima *Duwa* Sinwa Nawng.<sup>50</sup>

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<sup>49</sup> In one Rangoon case, in which military police officers were accused of the summary execution of 26 Burmese civilians without trial, the Indian interpreter who assisted the British interrogators in their investigation had served as as an interpreter for the Japanese military police in Burma during the occupation. Chaen BC級戦犯英軍裁判資料, 228.

<sup>50</sup> For reference to him as a "notorious collaborator" see Duval, 190. On the two as separate individuals, see *Political Systems of Highland Burma*, *ibid.* For more on Sima *Duwa* Sinwa Nawng, see Hugh Tinker, *The Union of Burma: A Study of the First Years of Independence*, 4th ed. (London, New York [etc.]: issued under the auspices of the Royal Institute of International Affairs by Oxford U.P., 1967), 73-76, 397.

## *The Evolving British Response*

Though British officers complained that its importance was vastly exaggerated, the uprising of the Burma National Army had a significant impact on an already weakened Japanese military in retreat.<sup>1</sup> It helped prepare the way for the occupation of Rangoon, harassed the retreat of the Japanese, and robbed them of any remaining local support. As with the INA and its exaggerated postwar claims for its importance, however, so too did the Burma National Army quickly begin to portray itself as the key to Japanese defeat. General William Slim, who had acknowledged that the BNA had provided some valuable assistance, grew annoyed with their “extravagant claims” after Japanese surrender. He protested that the BNA “rendered considerably more assistance to the Japanese than during the period after it had seen fit to transfer its allegiance to the Allies.”<sup>2</sup> The Burma National Army, renamed a third time by the Allies as the “Patriotic Burmese Forces,” was reluctantly permitted to join a 15 June victory parade in Rangoon.<sup>3</sup> Thanks to its brief few weeks of service in the war against the Japanese, the BNA and Aung San, who had until that uprising displayed brutality towards anti-Japanese insurgents, were reborn as anti-fascist combatants and set on a rocky path to becoming legitimate partners in negotiations for Burmese dominion status and self-rule. The challenges along the way to this transformation from a treasonous army to a competing source of military power in postwar Burma that was reluctantly partnered with has sometimes been overlooked. Christopher A. Bayly, a leading historian of British Empire concluded that, “In Burma

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<sup>1</sup> Bayly and Harper, *Forgotten Armies*, 434. Ōta ビルマにおける日本軍政史の研究, 447. Bečka *National Liberation Movement*, 235.

<sup>2</sup> For Slim’s appreciation of the help of the BNA see Maung Maung *Burmese Nationalist Movements* (Edinburgh: Kiscadale, 1989), 148-9. “Headquarters, Supreme Allied Commander, South East Asia SAC (Misc.) 21st Meeting, 5 September 1945” No. 261 PRO: WO 203/5240 (5 Sept., 1945) BSI, 434.

<sup>3</sup> Bayly and Harper, *Forgotten Armies*, 434.

there had never been a question of treating the BNA in the same manner as the INA, except among the most intransigent old British civil servants.”

In fact, there was considerable internal disagreement among the British military, colonial officials, and cabinet from 1943-1946 on the issue of how to treat Burmese collaborators in general, and specifically the Burma National Army, even after it switched sides. In November 1943, the chief civil affairs officer for Burma, Maj. Gen. Charles F. B. Pearce, noted that, in addition to section 121 of the Penal Code which provides for a penalty of death or life sentence, a similar clause in the Defense of Burma Act provides the same penalty for anyone, “with intent to wage war against His Majesty, or to assist any state at war with His Majesty...” Pearce pointed out that, in the year 1943 alone, at least ten persons had been executed for such treason in the Arakan and Chindwin areas.<sup>4</sup> “At any time,” he noted, “we may be faced with the trial of a large number of persons who are liable to the death penalty.” Already at this early stage, Pearce warned against the unsettling effect of any execution of a large number of people, and recommended that penalty only for those who had been found guilty of, “brutal behavior and disregard of the ordinary usages of war.”<sup>5</sup> Whatever the policy adopted, Pearce recommended that the functions of judicial tribunals not be interfered with, but that pardons be considered after harsh sentences. However, “it will do the Burman no harm,” he concluded, “to undergo a certain amount of mental anguish on being condemned to death by a tribunal; and public opinion will react more favorably to clemency if this is exercised after it has been judicially held that a sentence of death is, from the legal point of view, sustainable.”<sup>6</sup> This is not far from the kind of

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<sup>4</sup> “Major General C. F. B. Pearce to Chief of Staff, Headquarters SACSEA” No. 24 IOR: M/4/2597 No. 5/CA15 (12 Nov. 1943) *BSI*, 47.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, 48.

position the Red Fort prisoners of the INA found themselves in: on trial for crimes that could have ended in their execution, only to be released without confirmation of their sentence.

At a meeting in October 1944, the Governor-General of Burma, Sir Reginald Dorman-Smith, suggested the issue be treated with caution and only those, “who were guilty of murder or mass cruelty should be prescribed in the first instance.”<sup>7</sup> He expressed concern that Burmese officials needed for the regular functioning of local administrations would flee, fearing retribution for their wartime conduct. Specifically, he pointed to the example of local functionaries in Myitkyina, “who all disappeared when the Allies captured the town.”<sup>8</sup> Myitkyina was an unusual city to choose as an example. British forces were not significantly involved in the capture of the city from Japanese control in August, 1944. The city fell only after three months of prolonged siege by tens of thousands of Chinese soldiers and the American special operations unit known as Merrill’s Mauraunders. Burmese officials probably had as much to fear from Allied artillery as from retribution following capture. If they did fear retribution for collaboration, however, their most immediate concern was potential arrest by the United States Counter-intelligence Corps interrogation teams, or possibly, their Chinese equivalents, who had suffered heavy casualties against fierce Japanese resistance.

In December, 1944 a draft policy on collaboration in Burma was drawn based on a general principle of, “a generous and tolerant view of their conduct.”<sup>9</sup> This remarkable draft called for trials only for serious crimes and, in the case of civilian leaders of Japan's Burmese client state,

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<sup>7</sup> “Meeting between the Supreme Allied Commander, South East Asia and the Governor of Burma, 26 October 1944.” No. 51 PRO: WO 203/5261 BSI,102.

<sup>8</sup> Ibid.

<sup>9</sup> “SACSEA to Headquarters ALFSEA; GHQ India; Government of Burma” No. 65 IOR: M/4/2597 37/DICA (6 Dec. 1944) BSI, 123.

No grudges born against those leaders who simply chose the illusory freedom; on the contrary it is to be hoped that they will have gained from their experiences under Japanese rule a perspective which will equip them to serve their country better in future.<sup>10</sup>

According to the draft, in contrast to these collaborators in the civil administration, the personnel of the Burma National Army were to be denied Prisoner of War status and were liable for prosecution under either section 121 of the Penal Code (waging war against His Majesty) or the corresponding section of the Defense of Burma Act, though with an emphasis on the above-mentioned general principle of tolerance.<sup>11</sup>

When the BNA rose up in revolt on March 27, 1945, there was no immediate reversal of British positions on the potential prosecution of Burma National Army members for treason. Even the figure who later would show the greatest leniency in matters regarding trials for collaborators from India to Malaya, Supreme Commander South East Asia Command Admiral Louis Mountbatten, still called for those with “charges outstanding” to stand trial at the close of the war. He stood “entirely opposed” to any general amnesty being granted to the BNA and that they, “be told that their present actions were appreciated but that their past offenses have not been forgotten...”<sup>12</sup> Gradually, however, the more vague language of serious crimes and treason in general was replaced by discussions that focused on specific acts of illegitimate violence. By April, Mountbatten was suggesting that a new law be drafted to cope with those Burmese guilty of torture and other atrocities in connection with the Japanese occupation worded in such a way that it avoided, “introducing a political flavor into a

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<sup>10</sup> Ibid., 124.

<sup>11</sup> Ibid.

<sup>12</sup> “Headquarters, Supreme Allied Commander, South East Asia SAC (Misc.) 5th Meeting, 27 March, 1945” No. 107 PRO: WO 203/4404. BSI, 196.

criminal offense.”<sup>13</sup> The work had begun of walling off more egregious cases of atrocities by collaborators from simple acts of treason or war against His Majesty.

To accomplish this task, in May 1945, the Chiefs of Staff directed Mountbatten to initially make use of the Burma National Army, “as you will,” in fighting the Japanese but thereafter gather them in holding centers, and assign police to investigate atrocities.<sup>14</sup> The Deputy Chief of Staff for Information and Civil Affairs in Kandy recommended placing Aung San under house arrest and dividing the BNA (now the Patriotic Burmese Forces) troops into Whites, Grays and Blacks in the same way that the soldiers of Indian National Army were.<sup>15</sup> While Mountbatten agreed in principle to the idea of sorting through the BNA, he suggested it was not possible to peacefully collect 10,000 armed Burmese into holding centers or to secure the cooperation of their leader, Aung San.<sup>16</sup> The issue of organized interrogations of all these “patriotic” troops was thereafter dropped in debates throughout the summer of 1945. Instead the summer was spent determining exactly whether and how some of the members of the Patriotic Burmese Forces could be incorporated into a new Burmese army.<sup>17</sup> When Mountbatten first approached Aung San about the possibility of individual trials for atrocities, Aung San and other officers present seemed to accept the fact that no general amnesty could be offered, and is recorded as responding,

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<sup>13</sup> “Headquarters, Supreme Allied Commander, South East Asia (Misc.) 7th Meeting, 5 April 1945” No. 116 PRO: WO 203/5288 BSI 210.

<sup>14</sup> “Supreme Allied Commander, South East Asia to Chiefs of Staff” No. 172 IOR: M/4/1320 (May 22, 1945) BSI, 282.

<sup>15</sup> “Deputy Chief of Staff (Information and Civil Affairs) to Chief of Staff, Headquarters SACSEA” No. 175 PRO:WO 203/4404 (26 May, 1945) BSI, 286.

<sup>16</sup> “Supreme Allied Commander, South East Asia to Chiefs of Staff” (May 22, 1945) BSI, 282

<sup>17</sup> An agreement on this was reached September 7th in the so-called Kandy Agreement. See “Agreed Conclusions Reached Between the Supreme Allied Commander, SEA, and Major General Aung San at a Meeting at HQ SEAC, Kandy on Friday, 7 September, 1945” in Josef Silverstein, *The Political Legacy of Aung San* (Ithaca: Cornell University Press, 1993), 35.



“I understand this, but must point out that the people against whom you are most likely to have charges are my best officers and NCOs, and if they are suddenly removed it may interfere with your own operations, in which they are helping. Will you therefore please give me a few days’ notice in each case, so that I may endeavor to send up adequate reliefs to take their place.”<sup>18</sup>

The India and Burma committee seemed to rule finally on the issue in October 20, 1945, eliminating the question of acts of simple treason once and for all and leaving only the question of atrocities. “The question of the treatment to be accorded to Aung San and those who under him collaborated militarily with the Japanese has been largely prejudged by the treatment which has latterly been accorded to them...this recognition of these irregular and formerly hostile forces may seem to make it difficult to charge any of them with crimes against the state, though of course they are still open to charges of ordinary crimes of violence...”<sup>19</sup> Two days later, Burma Governor Dorman-Smith also agreed that the treatment of Aung San and his forces meant that only non-political crimes of a criminal character should be investigated going forward.<sup>20</sup>

It was only at this time that the state of affairs in Burma and India truly diverged. As the committee in Burma was recognizing that the issue had been “prejudged by the treatment” of the BNA after March, 1945, one could have argued that there was a similar “prejudgment” in the treatment of thousands of Indian National Army members that had been classified Whites, Grays, or even Dark Grays before May, 1945, and that had then “recovered” from their treason and returned to the ranks of the Indian Army. But at the very moment in October, 1945 when Burmese colonial officials had essentially tossed out the crime of treason in favor of other simpler crimes of violence, British officials in India were estimating that the large number of court-martials it was planning

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<sup>18</sup> “Headquarters Camp, Supreme Allied Commander, South East Asia SAC (Misc.) 12th Meeting, 16 June 1945” No. 202 IOR: R/8/30 BSI, 333.

<sup>19</sup> “Cabinet: India and Burma Committee. Paper I. B. (45) 16” No. 297 (October 20, 1945), BSI, 509.

<sup>20</sup> “Governor of Burma to Secretary of State for Burma” No. 301 IOR: M/4/2597 (22 October, 1945) BSI, 515.

would result in something around 50 death sentences. At the same time, the cabinet in England was being cautioned that a failure to punish those who broke their allegiance was an invitation to subversion. The debate amongst British officials on Burmese collaboration had moved from 1) considering leniency toward civil administrators but conducting some treason trials against military collaborators to 2) considering the interrogation of all Burma National Army, now PBF, troops to expose atrocities, to 3) selected individual investigations, and finally a 4) passive recognition of individual criminal accusations brought against members of the PBF.

These developments did not take place without some self-doubt. In India this primarily took the form of concern about justice for the “loyal Indian POW” who suffered while those who volunteered for the Indian National Army “cowardly” left the camp to serve their new Japanese masters. In the case of Burma, the equivalent of the loyal Indian POW was found in the various minority groups such as the Karens and Kachins that, for the most part, supported Allied guerrilla efforts. The forgiving policy towards the PBF may, warned a paper prepared for the cabinet, “provoke some dissatisfaction” with these groups.<sup>21</sup> This dissatisfaction was particularly strong among the Karens who suffered the most at the hands of Japanese military collaborators. They made their position clear in a petition submitted to the Governor the following spring, “The Karens stood loyally by the British. In Europe, it is found that such traitors are punished and friends rewarded. The opposite happened in Burma...”<sup>22</sup>

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<sup>21</sup> “Cabinet: India and Burma Committee. Paper I. B. (45) 16” No. 297 (October 20, 1945), *BSI*, 510.

<sup>22</sup> “Resolution adopted by Mass Meeting of the Karens, 25-27 April 1946” No. 463 PRO: FO 643/66 (51/GSO/47 Pt 1) *BSI*, 740.

*An Inconvenient Murder*

The progress of ever narrowing possibilities for judicial action against the PBF may have been settled at this point and allowed a limited number of cases involving torture or other atrocities to go forward. But new policy faced the challenge of an awkward murder case that came to light in the following month, November 1945, only days after the trial of Indian National Army officers on a combination of treason and murder charges commenced in Delhi. Lieutenant General G. W. Symes delivered a document to the Governor of Burma Reginald Dorman-Smith containing testimony offered by six Indians that, while commanding the Burma Independence Army in 1942, Aung San had murdered a British appointed village headman, Abdul Rauf, by his own hand.<sup>23</sup> In the momentous INA trials just then under way in Delhi, the British had chosen three men accused of the murder of one of their own fellow INA soldiers executed for desertion. This was their first selected example of INA brutality that was designed to shock the nation; a crime that was to dissolve the sympathy of nationalists around the subcontinent. Yet here in Burma, at that same moment, was a case of the brutal murder of a loyal Indian civilian administrator in British employ, surely more serious than a case of collaborators murdering fellow collaborators. Mountbatten, however, expressed little concern, “this appears to have occurred during the period immediately following our retreat; in the heat of the moment, and in the unsettled conditions which must have existed, it was only to be expected, I suppose, that summary justice would rule, and that old scores would be paid off.”<sup>24</sup>

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<sup>23</sup> “Lieutenant General G. W. Symes to Sir Reginald Dorman-Smith” No. 324 IOR: MSS Eur F 169/1 (18 November, 1945) BSI, 543. This murder case has been described elsewhere, including in Christopher Bayly and Tim Harper. *Forgotten Wars: Freedom and Revolution in Southeast Asia*. (Cambridge: Harvard University Press, 2007), 232-234 and Maung Maung *Burmese Nationalist Movements*, 200-201.

<sup>24</sup> “Lieutenant General G. W. Symes to Sir Reginald Dorman-Smith” BSI, 543.

The India and Burma committee of the Cabinet took up the issue the following day, November 19, admitting that, “this discovery raised an awkward dilemma,” that there was, “a risk of the prosecution being misrepresented as political persecution,” and suggested to forestall the issue by giving Aung San a chance to clear his name.<sup>25</sup> News of the accusation was not public and no action was taken until, only a few days after the first war crimes trial against Japanese soldiers began in March, the allegation against Aung San was made public by another witness to the murder: one of Aung San’s fellow “Thirty Comrades,” and a political officer attached to the Burma National Army, Tun Oke, who had just been appointed Minister of Planning by the British.<sup>26</sup>

With this revelation, “there can be no question of closing our ears,” admitted Arthur Henderson, Under-Secretary of State for Burma and India in a report to the British Prime Minister Attlee. The Governor Dorman-Smith recommended that a full investigation be carried out and that Aung San be detained after the first anniversary of the March uprising.<sup>27</sup> The embarrassment caused by the case was compounded by the discovery that the accuser Tun Oke had published a wartime memoir *My Struggle*—the title was a translation from Hitler's own work—which implicated him in the decapitation and impaling upon a stake of three dead British soldiers, and an order for the execution of almost a dozen British prisoners of war.<sup>28</sup> Concerned that playing up the atrocities mentioned in the memoir might bring forward counter-allegations about the cruelty of British rule in Burma,

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<sup>25</sup> “Cabinet: India and Burma Committee I. B. (45) 7th Meeting, Minute 3” No. 327 PRO: CAB 134/341 (19 November, 1945) *BSI*, 548.

<sup>26</sup> “Secretary of State for Burma to Governor of Burma” IOR: M/4/2618 (7 March, 1946) *BSI*, 670.

<sup>27</sup> *Epilogue in Burma 1945-48*, 48.

<sup>28</sup> “Arthur Henderson to Clement Attlee” No. 428 PRO: PREM 8/143 (25 March, 1946) *BSI*, 695 and “Secretary of State for Burma to Governor of Burma” No. 439 IOR: M/4/2811 (28 March, 1946) *BSI*, 710. The case against Tun Oke, which depended upon claims in his own memoir that he later claimed was censored and distorted, was soon dropped for lack of evidence. He was also particularly liked by Burma Governor Dorman-Smith who saw him as, “likeable and courageous,” *ibid.*, 710.

Governor Dorman-Smith warned Secretary of State Amery, "Please do not attempt to deny that we did cut off the heads of Burmese rebels during the last rebellion [of 1931]. We did, and Burma has not forgotten this. It is true that we brought in the heads of Burmans killed in action for purposes of identification. But a head is a head for all that."<sup>29</sup>

The public allegation of murder by Tun Oke sparked over three months of debate about how to proceed. Perhaps regretting his call, almost exactly one year earlier, to remind the Burma National Army that its "past offenses have not been forgotten" Mountbatten defended Aung San, "I should have thought our best policy would have been to forget incidents of this sort," and argued an arrest would be, "the greatest disservice" to future relations with Burma.<sup>30</sup> A meeting of leading Burma colonial officials on the anniversary of the rebellion March 27, 1946 was held, including military and police officials specifically to exchange opinions on the consequences of any arrest of Aung San. Deputy Governor John Wise noted that others had already been hanged for similar offenses going back to 1942, and thought it "deplorable" that Aung San's status would exempt him.<sup>31</sup> Unfortunately, the British were anything but consistent in dealing with such atrocities. Even before the BNA uprising, Major-General Pearce had granted amnesty to six hundred guerrillas working with Force 136 in Arakan, some of whom were about to be executed for the murder of Muslims and for collaboration with the Japanese in 1942.<sup>32</sup> In the case of Aung San, far more was at risk, and both Lieutenant General H. R. Briggs and G. Chettle, a police official, warned of serious consequences in their comments at the March meeting. The same day, in a letter to the Governor-General the

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<sup>29</sup> "Governor of Burma to Secretary of State for Burma" No. 438 IOR: M/5/102709 (28 March, 1946) BSI, 709.

<sup>30</sup> "Supreme Allied Commander, South East Asia to Governor of Burma" No. 431 IOR: M/5/102 (26 March, 1946) BSI, 698.

<sup>31</sup> "Minutes of a Meeting held at Government House, Rangoon, on 27 March 1946" No. 435 IOR: M/5/102 BSI, 704.

<sup>32</sup> F. S. V Donnison, *British Military Administration in the Far East, 1943-46*, (London: H. M. Stationery Off, 1956), 349.

Director of Public Relations George Appleton warned that arresting Aung San would “have results comparable to those of the INA trials in India.”<sup>33</sup>

Things only got worse the following month. Aung San publicly admitted executing the headman in a speech on April 7 but claimed that the executed headman was, “a wicked person who ill treated his villagers...”<sup>34</sup> The following day the wife of the headman submitted a formal petition requesting the punishment of Aung San for her husband’s death. In it she claimed her muslim husband, headman of Thebyugone Village in Thaton District, had served the British faithfully and had actively suppressed uprisings in his jurisdiction. She claimed that before his execution, her husband was insulted by the putting of a pig in the cart which transported him as a prisoner to Thaton. There he was starved for eight days and finally bayoneted by Aung San in a stadium after crucifixion to a goalpost.<sup>35</sup>

In April, the changeable Governor Dorman-Smith agreed that they must “finally reject” the idea of arresting Aung San because of the dangers involved after the pessimistic security briefing on March 27. He soon reversed himself once again to support Aung San’s prosecution and the need to face any unrest that might follow it. In the face of strong opposition from the Indian colonial government to the arrest and any use of the Indian Army to suppress opposition, the Governor began to plan the deployment of his few non-Indian troops to deal with the expected violence.<sup>36</sup> Not to act

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<sup>33</sup> “The Venerable George Appleton and B. R. Pearn to Sir Reginald Dorman-Smith” No. 436 IOR: MSS Eur F 169/1 (27 March, 1946) *BSI*, 707.

<sup>34</sup> “Translation of extract from Hanthawaddy newspaper, 7 April 1946” No. 451 IOR: M/5/112 *BSI*, 726.

<sup>35</sup> “The humble petition of Ma Ahma, wife of the late Abdul Raschid, residing at Paung” No. 452 IOR: M/5/102 (8 April, 1946) *BSI*, 728.

<sup>36</sup> “Lieutenant General Sir Montagu Stopford to Lieutenant General F. E. W. Simpson” No. 491 IOR: L/WS/1/1052 (7 May, 1946) *BSI*, 775. On deployment estimates see “Lieutenant General Sir Montagu Stopford to Lieutenant General F. E. W. Simpson” No. 497 IOR: L/WS/1/1052 (10 May, 1946) *BSI*, 781.

upon the petition, argued Dorman-Smith was to “impugn law and bring it into contempt.”<sup>37</sup> In May, however, acting on Indian opposition, the London cabinet ordered an “embargo” on action against Aung San until final agreement could be made on how best to proceed.<sup>38</sup> The Governor-General began to waver once again. In a letter to Prime Minister Attlee he echoed a claim made by Aung San that his case would reopen the issue of wartime atrocities, and “once we begin to deal with complaints...people will feel encouraged to work off old scores.”<sup>39</sup> Perhaps, he mused, there was no course but to declare an amnesty for crimes during the occupation. After Aung San stopped by for a “heart to heart talk” in the last days of his Governorship, Dorman-Smith wondered, “whether police could not just say that their investigations show there is so much doubt attached to the case they do not wish to pursue it.”<sup>40</sup>

During this flurry of exchanges between the cabinet, the colonial government of India and Governor Dorman-Smith, the Aung San murder case should have been moving slowly through the legal system from police investigation to indictment. In fact, these steps in preparation for any final arrest were not taken. According to an account by Frank Donnison, the widow’s petition for justice, “reposed” untouched in his safe until Donnison transferred it to Government House as a sensitive matter to be dealt with by the Governor at “his discretion.”<sup>41</sup> Even without action, however, the case

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<sup>37</sup> “Sir Reginald Dorman-Smith to Arthur Henderson” No. 464 IOR: M/5/102 (26 April 1946) BSI, 742.

<sup>38</sup> “Secretary of State for Burma to Governor of Burma” No. 503 IOR: M/4/2618 (15 May, 1946) BSI, 787.

<sup>39</sup> “Sir Reginald Dorman-Smith to Clement Attlee (via Burma Office)” No. 490 IOR: L/PO/9/16 (7 May, 1946) BSI, 774.

<sup>40</sup> “Governor of Burma to Secretary of State for Burma” No. 528 IOR: M/5/102 (24 May, 1946) BSI, 811. Bayly and Harper portray Dorman-Smith as driven by a desire to prosecute Aung San, and some of his communications give that impression, but his position on the issue, like that of other officials, was not consistent until the final stage. See below. Bayly and Harper, *Forgotten Wars*, 233. They claim the murder case is “shelved” in March or April, but it is not finally resolved until Knight’s intervention in June.

<sup>41</sup> See Donnison’s narrative in IOR: MSS Eur E 362/4 BSI, 1008.

still hung like a shadow over negotiations with the leaders of the March rebellion and in debates over the composition of a new Executive Council for Burma.

Having lost the confidence of the prime minister, not the least for his vacillating tendencies, Dorman-Smith was dismissed as Governor and returned to England. Henry Knight, an experienced colonial official with wide support, was appointed as acting Governor in his place. Knight felt that prosecuting Aung San was like, evoking a biblical metaphor, “straining at a gnat.”<sup>42</sup> If this was true, however, it was only because the British had already “swallowed the camel” that was the Burma National Army. The “beautiful outward,” as the New Testament verse continued, was, “within full of dead men’s bones, and of all uncleanness.”<sup>43</sup>

It would be Knight, who only served as acting Governor from June to August 1946, who would finally settle the issue of Aung San’s murder case in a single stroke. He drew up an act, “primarily to prevent Aung San and Let Ya cases coming into court without my special sanction,” entitled “The Sanction for Prosecution (War-times Offences) Act, 1946.”<sup>44</sup> It required the Governor’s sanction before any court accepted a criminal case involving offenses committed from December 8, 1941 to May 5, 1945. This was not an amnesty; the former BNA soldiers and their leaders were not explicitly “forgiven” in any legal sense for either their treason or wartime atrocities. Instead, Knight chose a unique approach that produced the same results without the distasteful responsibility associated with

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<sup>42</sup> Matthew 23:24 “Ye blind guides, which strain at a gnat, and swallow a camel.”

<sup>43</sup> Matthew 23:27

<sup>44</sup> “Sir Henry Knight to Lord Pethick-Lawrence” No. 609 PRO: PREM 8/143 (16 July 1946), 896 and “Note by Sir Gilbert Laithwaite for Lord Pethick-Lawrence and Arthur Henderson” No. 611 IOR: M/5/102 (16 July 1946) *BSI*, 897. In the latter document, Dorman-Smith emerges briefly to show verbal support for trying Aung San. Let Ya, member of the Thirty Comrades, deputy Commander in Chief of the BNA 1943-5, and a leading postwar military figure, came under suspicion of extortion charges. See “Minute by Sir Gilbert Laithwaite for Secretary of State for Burma” No. 592 IOR: M/4/2602 (5 July, 1946) *BSI*, 877.



an amnesty: the creation of a legal black hole. Petitions for cases might be submitted, police investigations carried out, but no trials would result.

The War-time Offenses Act was created to address the awkward case of Aung San and some of his fellow commanders. However, it also effectively decided the question of how to deal with wartime collaboration as well as wartime atrocities across the board. Although the Governor could still allow cases to go forward, the progress of all prosecutions could now be decided solely on political expediency, rather than upon their legal merit.

The influence of the Aung San murder case was felt all the way down to the local level, as can be seen in an account by the Deputy Commissioner at Mergui in southern Burma, Maurice Maybury. After his return to the colony, a number of collaborators were jailed and some investigated for atrocities in his district. One of them was accused of taking part in a public execution. A random victim had been selected, tied to a post and the execution was carried out by a number of Burmese thakins and Japanese soldiers.

Our man had been one of those taking part in the bayonetting. The evidence against him was overwhelming and we were sure that when the case came to trial the conviction was inevitable. While the case against him was being prepared, however, orders were received from Rangoon that the charge of murder was not to be preferred... and lesser charges were preferred of which he was subsequently found guilty. It was not until some time afterwards that we discovered the reason for the apparently inexplicable orders of the government not to proceed with the case. It was because such a prosecution in such a case would've created an unfortunate precedent which might well have led to similar charges being preferred against Bogyoke Aung San...<sup>45</sup>

Frank Donnison, who had guarded over the petition against Aung San in his safe, offers further confirmation in his history of the British Military Administration. According to Donnison, none of the special tribunals that had been planned for hearing collaboration cases in Burma were ever

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<sup>45</sup> Maurice Maybury, *Heaven-Born in Burma* (Somerset: Folio Hadspen, 1984), 111.

convened. Given the treatment shown Aung San, officials recognized that, “there could be no justice in proceeding against others,” and the issue was, “quietly allowed to sink out of sight.”<sup>46</sup>

The early postwar debates among British officials over how to deal with the treason and atrocities of military collaborators with the Japanese were ultimately settled by the political reality the empire faced in 1945. In Burma, the peeling away of the collaboration problem to leave a core of punishable “turncoats who happened to be brutes,” was ultimately not enough to settle matters, even without including the highly political crime of treason. One turncoat, accused of murder, was too valuable to lose. The 1946 law created to save him ended attempts to try other Burmese collaborators accused of atrocities, even as prosecutions of Japanese soldiers for similar crimes proceeded throughout the year. Though his popularity was in decline, Aung San wielded the threat of an armed uprising against the weakened British Empire effectively until his assassination in 1947, while offering at the same time the prospect that he could serve as a moderating influence upon the Communists within his increasingly fractured political alliance, the Anti-Fascist People's Freedom League (AFPFL). Aung San was also seen as the leader of sufficient stature to help negotiate a power arrangement between the many ethnic groups of the colony.<sup>47</sup> For decades after his death he would be remembered as the ultimate military and even spiritual leader of the modern Burmese nation and the founder of the Burmese army. During the protests of 1988 Aung San would once again become an awkward thorn in the side of the government from beyond the grave, but this time for his wartime comrade Ne Win. During the protests, Aung San's daughter Aung San Suu Kyi began to invoke the memory of her father in the cause of democratic opposition to the Ne Win dictatorship.<sup>48</sup>

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<sup>46</sup> Donnison *British Military Administration in the Far East 1943-1946*, 304-5.

<sup>47</sup> In addition to the possibility of violence from PBF troops in the new Burma army, Aung San also founded a “People's Volunteer Organization” made up of demobilized PBF forces.

<sup>48</sup> David I Steinberg *Turmoil in Burma: Contested Legitimacies in Myanmar* (Norwalk, CT: EastBridge, 2006), 55.

If the British colonial government had proceeded with trials for crimes committed during the Japanese occupation without attempting to attach it to the political crime of treason, it still would have had to overcome many challenges. Prosecutors for special tribunals would be faced with complex cases of inter-ethnic violence that represented the most significant acts of wartime atrocities. As negotiations were underway to create a single Burmese federation that included several autonomous states, both British and various representatives of Burmese groups were eager to avoid anything which might contribute to instability. It is possible that trying ethnic Burmans, for example, for wartime crimes against Karen villages, might have increased confidence among Karens in the sincerity of any newly formed regime, but how would they have reacted to trials of their own number who engaged in similar acts? How were acts carried out by native guerrillas acting on behalf of the Allies to be dealt with?

Beyond the ethnic dimension, two contending “red” and “white” Communist factions operating outside and within the AFPFL were eager to take advantage of any perceived weakness by Aung San and other non-Communist AFPFL leaders in the face of British demands. Trials for wartime crimes would offer Communists two tempting political options. They could oppose the trials as another example of imperialism at work, or perhaps more dangerously, embrace them in the hope that non-Communist leaders of the AFPFL were at greatest risk of prosecution. Even without the unknown impact of the trials, the crippled British administration was already overwhelmed. However, despite all the worrying signs, in 1946, the British colonial administration still held out some hope for peace in a post-colonial Burma, even if almost all of Burma’s leading politicians were potential candidates for a treason trial only months before. Its highest priority was in leaving behind an administration with enough credibility and broad appeal that it could overcome some the many ethnic as well as political divisions that loomed. When he stepped down, Governor Knight invited

Aung San, Ba Maw, U Saw, and Ba Sein—all nationalists who had turned to Japan during the war—over for his farewell party. “If they’ll come,” he mused, “I should like to regard it as a good omen for the future!!”<sup>49</sup>

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<sup>49</sup> “Sir Henry Knight to Lord Pethick-Lawrence” No. 656 IOR: L/PO/9/7 (12 August, 1946) *BSI*, 948.

## **Part II: Trying Atrocity as Treason in the Philippines**

There was another case in which a postwar regime attempted to limit prosecutions of treason to military collaborators and try wartime atrocities under the laws of betrayal: the Philippines. As with Burma and India, the Philippines was a colony that was promised liberation by Japan. In the fall of 1943, Burma and the Philippines were both granted their independence, if in name only, and the Provisional Government of Free India of Subhas Chandra Bose was founded a few weeks later. In the two years up to the declaration of a new independent republic in the occupied archipelago, however, the explicit U.S. promise of Philippine independence in the 1934 Tydings-McDuffie Act and what David Joel Steinberg has called the, “self-liquidating quality of the American colonial venture” made Japanese promises of freedom from Western imperial oppression a less intoxicating prospect.<sup>1</sup> Despite this fact, within days of its occupation of Manila, the Japanese military administration was able to assemble an executive commission supporting the military administration composed almost entirely of well-respected prewar oligarchs.

Within three years of Japanese defeat the newly independent Philippine government would grant all political collaborators amnesty in accordance with the “overwhelming sentiment of the people”—the focus of the following chapter, and continue treason prosecutions only for military collaborators or those who had committed violent crimes, “for the purpose of aiding and abetting the enemy,” which we will consider in a separate chapter.<sup>2</sup> Were it not for the explicit exclusion of military collaborators, the actual course of political retribution in the Philippines might have led to a similar outcome, if by different means, as the process in postwar South Korea, after an American military government there was replaced by a new independent republic. In the southern Korean

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<sup>1</sup> David Joel Steinberg, *Philippine Collaboration in World War II* (Ann Arbor: University of Michigan Press, 1967), 14.

<sup>2</sup> “A Proclamation Granting Amnesty” Proclamation No. 51 (January 28, 1948) *Official Gazette* <http://www.gov.ph/1948/01/28/proclamation-no-51-2/> accessed June 20, 2011.

republic a special commission set up to investigate crimes of collaboration was completely stripped of its teeth in the summer of 1949. In both the republics of South Korea and the Philippines the failure of the process ensured strong continuities across the 1945 divide, preserving the existing elite domination of politics and administration into the postwar decades.<sup>3</sup> In both cases, the issue of collaboration was a powerful weapon in the hands of the political opposition: populist, leftist and communist inspired political movements lost no opportunity to describe the halls of government as a den of traitors. However, what the Philippines lacked in duration of occupation in comparison to Japanese colonial rule in Korea, it more than made up in terms of the scale of devastation, massacres, and rape by Japanese forces and its local collaborators after it expelled the United States from the archipelago. Indeed, perhaps the most important difference between the two was that the Republic of Korea set out to try those who *collaborated* with its former colonial master, while the Philippines was trying collaborators who had *betrayed* its former colonial master, since the treasonous acts were, at their moment of commission, a violation of allegiance to the “United States *and* the Philippine Commonwealth.” The treason law itself was virtually identical to the American one enshrined in its prewar penal code rather than the product, as in the Korean case, of highly contested postwar legislation, and its treason trials cited American precedents as often as it did those from the Philippines.

In the Philippine trials, however, we do not find a colonial power desperate to make some last demonstration about the costs of disloyalty within its military, as in India, or come to terms with an awkward new collaborationist ally without completely ignoring its crimes in war, as in Burma.

Though it proceeded immediately to try Japanese war criminals in military tribunals on Philippine

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<sup>3</sup> It is tempting to include China here, but though contemporaries might have made a similar claim, it is a far more complex case, as is discussed in other chapters. The continuities of elites in one local region is considered in Alfred McCoy, “Politics by Other Means: World War II in the Western Visayas” in A. W. McCoy ed. *Southeast Asia under Japanese occupation*. (New Heaven: Yale University Southeast Asia Studies), 158-203.

soil, the U.S. Forces handed over suspected collaborators to the new Philippine republic within days of its independence in 1946 without trying any of them. Nor did politicians and accused collaborators who led the call for amnesty in Manila build their arguments upon a foundation of postcolonial angst.

The Philippine discourse of patriotic collaboration was thus unlike any other case in Southeast Asia: the elites who served during the occupation were not heroes because they fought for freedom and independence, but because they quietly subverted tyranny. In this respect, political retribution in the Philippines was unique among the Western colonies occupied by Japan. Instead, the discourse on treason in the courts and legislature of the Philippines would be remarkably familiar to anyone following the same issue in China, France, Greece, or in more than a dozen other countries. Historical works in the postwar decades addressing collaboration in the Philippines almost invariably emphasize the complexities of loyalties under colonial rule to explain the logic of collaboration and to be sure, in wartime propaganda the legacy of American colonial rule was ceaselessly condemned, but in the early aftermath of the war the leading political collaborators rarely deployed this defense. Instead they arguing they had served as a shield for the people in a time of war. As the three Filipino judges in the very first treason case of the newly established People's Court noted when confronting the shield defense in their ruling, "Suffice it to say that Petain, Laval and Quisling, and no lesser figures from many lands, have all repeated the catchy selfsame plea."<sup>4</sup>

Political retribution against collaborators in the Philippines did share, however, one central feature with the processes we have examined in the Indian and Burmese cases: here too the problem of collaboration was dealt with by reducing consideration only to military collaborators and those

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<sup>4</sup> Quoted in Steinberg *ibid.*, 139. Later, a more sympathetic People's Court judge appointed by President Roxas would approve of this same "catchy" plea, saying that pro-Japanese speeches by wartime leaders were all "shields to protect the people from the brutality of the enemy." Eusebio Lopez quoted in Steinberg, *ibid.*, 159.



responsible for atrocities. In the Philippines the outcome of this process yielded more stabilizing results at the political level, as a limited 1948 amnesty for the elites who held wartime positions or who were leaders of the occupation war economy for the most part averted serious political unrest. In the following chapter we will examine the debates over the amnesty and find that, while support for leniency was sufficient to ensure an overwhelming vote of support for the presidential decree, there was also considerable discomfort about its scope. The exclusion from the amnesty of thousands of cases of accused military collaborators and those guilty of atrocities was contested by legislators who pointed out its contradictions and the social injustice it represented. The exceptions were ultimately justified by emphasizing the undeniable horrors of the violence committed by the perpetrators but, as the trials themselves would show, treason prosecutions were a deeply flawed vehicle for confronting the atrocities of war.

## Chapter 5: Military Collaboration and the 1948 Amnesty

### *A Geography of Treason*

The Philippines has fully rehabilitated the reputations of its leading wartime collaborators with Japan. Elsewhere around the world after World War II, it was rare for the “shield” defense—in which collaborators claim that they protected the people against even worse repression by the occupier, or the “double game” defense—the claim to be feigning collaboration while in fact working for the resistance, achieve the resounding success won by elite collaborators of the Philippines. Perhaps the most visible sign of this came in 2010, when the presidency fell to Benigno Aquino III. Aquino’s grandfather, of the same name, was Speaker of the National Assembly under the Japanese occupation, a vocal opponent of the resistance movement, and leader of the Japanese sponsored wartime political party, the Kalibapi.<sup>1</sup>

The literal geography of political power in the Philippines today is marked by leaders who served under the Japanese occupation from 1942 to 1945. In Manila, the street in front of Aquino’s Malacañang Palace is named after the president of the Japanese occupation’s “independent” republic declared in 1943: Jose P. Laurel. Mere steps away, the long Claro M. Recto Avenue is named after one of the leading 20<sup>th</sup> century legal minds in the Philippines but one who, in his capacity as wartime foreign minister, called for victory in Japan’s effort to establish its Greater East Asia Co-Prosperity Sphere in speech after speech.<sup>2</sup> These two men, both former Supreme Court judges before the war,

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<sup>1</sup> Aquino is the son of Corazon Aquino, an even more important figure in Philippine history. As the first woman to hold the office, “Cory” Aquino served as president from 1986-1992 after leading the opposition movement which toppled the dictator Ferdinand Marcos. She rose to prominence after her husband, Benigno Aquino Jr., a longtime opponent of Marcos, was assassinated in 1983. José Rizal was an author and nationalist reformer who was executed by the Spanish in 1896.

<sup>2</sup> For a selection of Recto’s wartime speeches, see Claro M Recto, *The Complete Works of Claro M. Recto*, (Manila: Claro M. Recto Memorial Foundation, 1990) v. 5, 295-407. See also practically every *Official Gazette* issue from 1943-1944, which included the texts of major speeches delivered by officials.

were tried for treason after Japanese defeat. Recto would rise enthusiastically to the occasion, presenting the Supreme Court with the most eloquent and legally formidable, if unsuccessful, defense of the wartime collaborators in the Philippines in *Laurel vs. Misa*.<sup>3</sup> Already well respected before the war, both men would go on to long postwar political careers and runs for the presidency. Laurel gained over a third of the national vote in the violently contested 1949 election and Recto made his own attempt in 1957 with running mate Lorenzo Tañada, the very former Solicitor General who led treason prosecutions against the leading political collaborators and whose assistant Solicitor General successfully argued against Recto in the 1947 *Laurel vs. Misa* case. Even the two volumes of the most frequently cited history of the Japanese occupation of the archipelago, published in 1965, were dedicated to the memory of these two men: the first volume to Laurel, and the second to Recto.<sup>4</sup>

In Manila, Recto's avenue cuts from east to west across the city center, intersecting the north to south roads of three other towering historical figures, Quezon Boulevard, Rizal Avenue, and Ferdinand E. Marcos Highway.<sup>5</sup> More awkwardly, it also intersects a smaller street named after another former supreme court justice, Jose Abad Santos. Santos was executed by the Japanese forces in 1942 after he refused to serve the occupation regime.<sup>6</sup> In early postwar Philippines, the name of

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<sup>3</sup> Recto's argument at trial was edited and published as Claro M. Recto, *Three Years of Enemy Occupation: The Issue of Political Collaboration in the Philippines* (Manila: People's Publishers 1946). The actual briefs he submitted for the Supreme Court (*Laurel vs. Misa* G.R. No. 409 January 30, 1947, 77 Phil. 856) which lay out his argument of "suspended sovereignty" can be found in Claro M Recto, *Complete Works*, v. 6, 1-469. The Anastacio Laurel in *Laurel vs. Misa* was not a relation of José P. Laurel.

<sup>4</sup> Teodoro A. Agoncillo, *The Fateful Years; Japan's Adventure in the Philippines, 1941-45* (Quezon City: R.P. Garcia Pub. Co, 1965), v. 1 and 2.

<sup>5</sup> Manuel L. Quezon was president of the Philippine Commonwealth from 1935 until 1944. He retreated into exile with American forces in 1942. Marcos was president and later dictator of the Philippines from 1965 to 1986.

<sup>6</sup> There is much uncertainty around the execution order itself. See Leocadio De Asis, *The Thread of Fate: A Personal Story in Philippine-Japanese Relations* (Makati, Metro Manila: Philippine Foundation of Japan Alumni, 1986), 134-5.

Santos was raised time and again by both critics and supporters of the wartime collaborators.<sup>7</sup> For the former, his bold refusal to serve the Japanese contrasted with the cowardice of the traitors.<sup>8</sup> For the latter, his death was definitive proof of the state of duress in which so many chose to accept their positions under Japanese military rule.

On the large island of Mindanao in the south, a city of half a million people, General Santos City, is itself named after Paulino Santos, an officer who rose to the position of Chief of Staff in the Philippine Army before the war, but one who would end his career as director of the wartime Constabulary, a position he assumed just in time for its Commander in Chief, President Laurel, to declare that a state of war existed between the Philippines and the United States. In nearby Davao, the second largest city in the Philippines, another Claro M. Recto Avenue cuts across the heart of the city and continues north, appropriately enough, under the new name J. P. Laurel Avenue when the former meets Elpidio Quirino Avenue near the city center. Quirino was the two term postwar president of the Philippines who defeated the rehabilitated Jose P. Laurel in the 1949 election. During the election campaign it had been difficult for Quirino to attack Laurel for his wartime career for, as Recto noted at the time, when he tried to, “raise the dead issue of collaboration,” he was, “frightened when he recognized his own face in the apparition.”<sup>9</sup> Quirino was among the first to attempt to cripple the power of a People's Court to try collaborators after the war perhaps partly because, during the war, in January 1942, his name came just before Laurel on the long list of Filipino elites who swore obedience to the Japanese occupation authorities in what Recto himself referred to as the

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<sup>7</sup> José was the younger brother of Pedro Abad Santos, founder of the Socialist Party of the Philippines which eventually merged into a popular front with the Communist Party in 1938. Unlike his far more conservative brother, Pedro was not executed following his capture by the Japanese and survived until his release in 1944.

<sup>8</sup> For excerpts and descriptions of some of the memorial speeches, awards, and related honors bestowed on him, see Ramon C. Aquino, *A Chance to Die; a Biography of José Abad Santos, Late Chief Justice of the Philippines* (Quezon City: Alemar-Phoenix Publishing House, 1967), 224-239.

<sup>9</sup> “Politics, Pure Politics” (July 16, 1949) in Recto, *Complete Works*, vol. 7, 91.

“Magna Carta of Treason.”<sup>10</sup> Quirino served less than enthusiastically as a member of a wartime Council of State, led by Jorge B. Vargas, which was the leading advisory body of the Japanese Military Administration before Laurel’s occupied republic was established in 1943.<sup>11</sup> In 1944 Quirino helped organize the first anniversary celebrations of the independence granted to the Philippines by its Japanese occupier. During the event, which took place a week before Douglas MacArthur announced his triumphant return to the Philippines as he stepped onto a beach in Leyte, Recto was granted a decoration from the Japanese emperor as First Order of Merit with Grand Cordon of the Rising Sun, joining the other leading wartime leaders Laurel, Vargas, and Aquino as a recipient of the honor.<sup>12</sup> In Davao today, the three streets named after Laurel, Recto, and Quirino are only outmatched in location by the wide Roxas Ave, named after the early postwar President Manuel Roxas. After briefly serving in Laurel’s wartime cabinet, Roxas was given the full protection of his friend and prewar commanding officer Douglas MacArthur. As the cynical Brigadier General Elliot R. Thorpe, the Counter-Intelligence Corps commander who MacArthur asked to take charge of the Philippine collaboration issue in 1945, put it,

In all the files on enemy collaborators, there was none more interesting than that of Manuel Roxas...The file on Roxas was a fascinating story of how to play both ends against the middle and win first prize. Throughout the period of enemy control of the islands, this smooth talking politician made it clear to the Japs that if there was one group of people he really admired they were it.

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<sup>10</sup> Ibid. Recto says he signed first, but his name actually comes third after Jorge B. Vargas and José Yulo. A photo of the document is in Armando J. Malay, *Occupied Philippines: the Role of Jorge B. Vargas During the Japanese Occupation* (Manila: Filipiniana Book Guild, 1967), 81.

<sup>11</sup> Vargas dropped him by executive order in May along with others to replace them with more clearly pro-Japanese members such as Pio Duran and Artemio Ricarte. Steinberg, David Joel Steinberg, *Philippine Collaboration in World War II* (Ann Arbor: University of Michigan Press, 1967), 64. Quirino was briefly imprisoned by the Japanese on suspicion of having contact with guerrillas later that year, but released after two weeks.

<sup>12</sup> On Quirino organizing the anniversary, and Recto’s awards see biography card for Elpidio Quirino and Claro Recto attached to American Embassy Manila to Secretary of State RG59 896.00/2-747 (Feb. 7, 1947). See also Agoncillo, *The Fateful Years* vol. 1, 416.

At the same time he took great care to keep in touch with a few Filipino and American guerrillas, sending words of encouragement and good wishes.”<sup>13</sup>

After winning the Presidency and carefully gauging public and American opinion, Roxas granted amnesty to his wartime colleagues in 1948, thus bringing to a close their ordeal and freeing them to re-launch their political careers in earnest.

With a few notable exceptions, the historiography on collaboration in the Philippines is marked by an admiration and sympathy for the plight of these elite collaborators. Theirs’ was an unhappy lot, the refrain goes, who were ordered to stay behind and protect the people by the retreating President Quezon. Bearing this heavy burden, they were able to persevere in their awkward and dangerous positions in the Japanese sponsored regimes only thanks to their unbounded patriotism; desperately trying to thwart the occupier from within the regime while preserving national unity and furthering the cause of the people. Each of them offered evidence of their true loyalties. For Laurel, it was his efforts to delay a declaration of war on the Allies and even more his refusal to permit the conscription of Filipino soldiers. This is not to be underestimated. As Pacita Pestaño-Jacinto, whose diary contained plenty of criticism for wartime political collaborators, commented in her description of the President’s speech on the issue of conscription, “For this Laurel has made himself a hero in the eyes of his countrymen.”<sup>14</sup> For Recto, it was his June 1944 memorial, which he claimed to have sent to the Japanese Ambassador Murata and Lieutenant-General Wachi.<sup>15</sup> In the letter, copies of which circulated widely, he condemned in great detail the failures and

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<sup>13</sup> Elliott Raymond Thorpe, *East Wind, Rain: the Intimate Account of an Intelligence Officer in the Pacific, 1939-49* (Boston: Gambit, 1969), 159.

<sup>14</sup> September 27, 1944 entry. Pacita Pestaño- Jacinto, *Living with the enemy: a diary of the Japanese occupation* (Manila: Anvil Publishing, 1999), 232.

<sup>15</sup> Hernando Abaya claims Recto never delivered the letter to the Japanese and disavowed the letter when confronted with it by them. Hernando J Abaya, *Betrayal in the Philippines* (Quezon City: Malaya Books, 1970), 45. Recto reprints the letter as an appendix in Recto, *Three Years of Enemy Occupation*, 115.

hypocrisy of the occupation. Quirino was briefly imprisoned as a guerrilla suspect, and his brief service in the wartime republic was not enough to save his wife and three of his children from death at the hands of Japanese soldiers during the liberation of Manila in 1945.<sup>16</sup> Paulino Santos was thought to be more enthusiastic about the Japanese cause but is better remembered for having clashed with the Japanese military police in order to prevent the death of many civilians.<sup>17</sup> For Roxas, there were the stories of self-induced fever to delay accepting any position in the puppet government, and the role he played as a link between Laurel and agents of the resistance was attested to by many.<sup>18</sup>

Absolutely key to their “shield” defense, however, was their ability to point to a more ominous evil that lurked in the wings, prepared to assume power the moment these collaborators failed in their double game. These were the “genuine pro-Japanese” traitors, the allies of the two famous revolutionaries Benigno Ramos and Artemio Ricarte. These two had turned to Japan for help in ridding the Philippines of its American overlord long before the war and their followers were seen as sycophants ready to carry out the violent bidding of the occupier.<sup>19</sup> Only they, it was suggested, were truly willing to wage war on the resistance and thus pitch Filipino against Filipino in a violent civil war. Their moment would finally come in late 1944, after U.S. forces had already landed and begun to retake the archipelago.

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<sup>16</sup> Despite this, when he was first elected president in 1949, he issued an amnesty for Japanese war criminals serving sentences for war crimes in Muntinlupa Prison. Leocadio De Asis, *The Thread of Fate*, 96.

<sup>17</sup> For evidence of his interventions see Angelito L. Santos et al. *Under Japanese Rule: Memories and Reflections* (Quezon City: Foundation for Nationalist Studies, 1992), 30-32, and Maria Virginia Yap Morales, *Diary of the War: World War II Memoirs of Lt. Col. Anastacio Campo* (Manila: Ateneo de Manila University Press, 2006), 160.

<sup>18</sup> An example of the most sympathetic portrayal of his time during the occupation is found in Marcial Primitivo Lichauco, *Roxas; the Story of a Great Filipino and of the Political Era in Which He Lived* (Manila: Kiko Printing Press, 1952), 154-198.

<sup>19</sup> The argument is frequently put this way by the leading political collaborators. See for example, Claro M. Recto, *Three Years of Enemy Occupation*, 18. Agoncillo *Fateful Years* vol. 2, 909, 916.

In November, Philippine military collaboration with the Japanese would commence in earnest, suggests the standard narrative, especially following the creation of a military organization known as the Makapili. But this neat account is indeed too neat. While Ramos has been “dismissed contemptuously” by historians such as Teodoro Agoncillo, thanks in part to his “delirious admiration for the Japanese,” Ricarte, whose collaboration “was based on historical grounds,” would soon be restored to a position as the nationalist hero of the American-Philippine war, who had fought bravely against the United States until his capture in 1900.<sup>20</sup> In 1969, by order of the Senate and the House of Representatives, the house Artemio Ricarte was born in was transformed into a “national shrine,” awarding it a status also held by Fort Santiago, Japan's wartime military police headquarters and the most feared home of torture and execution during the Japanese occupation.<sup>21</sup> When the Philippine legislature debated the presidential amnesty in 1948 it was the contrast between the collaboration of the occupation's governing elite and the informers and military collaborators that dominated the discussion. Let us examine these mostly reviled wartime figures in closer detail.

### *Military Collaboration in the Philippines*

The organized Japanese use of armed Filipinos in counterinsurgency efforts did not begin right away. It came in two very distinct stages, the first after the stabilization of the occupation in 1942 and the second following the return of American forces to the archipelago in 1944. Japanese

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<sup>20</sup> Agoncillo, *Fateful Years*, vol. 2, 917.

<sup>21</sup> Republic Act No. 5648 "An Act Providing For The Establishment Of A National Shrine In The Municipality Of Batac, Province Of Ilocos Norte, To Be Known As Ricarte Shrine." (June 21, 1969) Republic Act No. 597 "An Act To Declare Fort Santiago A National Shrine And To Provide For The Preservation Of Historical Monuments In The Walled City Of Manila" (March 6, 1951) Fort Santiago is a complex site of memory, and is perhaps more known as a symbol of Spanish rule, and the imprisonment there of José Rizal and other Filipino nationalists. On the later 1975 national "shrine" memorializing the resistance of mountain guerrillas, see Ricardo Trota Jose, "War Memorials and Commemorations in the Philippines: An Exploratory Look" in Lydia N. Yu-Jose ed. *The Past, Love, Money, and Much More: Philippines-Japan Relations Since the End of the Second World War* (Manila: Ateneo de Manila University Press, 2008), 25.



efforts to recruit military collaborators in the Philippines lacked consistency in policy and commitment of resources. In these regards it joined the chaotic efforts to find military allies across the domains occupied by the empire. The training of large numbers of Burmese and Indian troops began almost immediately in 1942 as Japan moved into Southeast Asia. In Thailand, following a few hours of resistance and subsequent rebirth as a Japanese ally, over thirty thousand regular Thai soldiers advanced into the Shan states of Burma in May, 1942 and established a military occupation there, though they soon lost enthusiasm for the venture and secured local ceasefires with the mostly Chinese forces that opposed them. On Java, in the occupied Dutch East Indies, a volunteer force was announced by the Japanese military administration in October, 1943 with a similar plan announced in occupied Malaya two months later in December.<sup>22</sup> In Indochina, where Japan maintained a strained relationship with local Vichy French administrators until March 1945, serious efforts to create a large scale volunteer army was not begun until a few weeks prior to surrender.<sup>23</sup> In China, Japanese commanders pursued a twofold strategy, dating back to the warlord politics of the late 1920s. Where it established or sponsored its own client administrations, such as Manchuria, “autonomous” governments in northern China and the new Nationalist regime under Wang Jingwei, the Japanese military provided direct but very limited military support and training to “national” armies. As elsewhere, officers supplemented this strategy with tactical flexibility in the field; its units often cooperating with existing small, independent and armed groups, whether they were bandits, rural militias, or armed elements of religious organizations.

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<sup>22</sup> Paul H. Kratoska, *The Japanese occupation of Malaya: a Social and Economic History* (University of Hawaii Press, 1997), 83. Joyce Lebra-Chapman, *Japanese-Trained Armies in Southeast Asia: Independence and Volunteer Forces in World War II* (New York: Columbia University Press, 1977), 98.

<sup>23</sup> The lone exception to this was brief early support for arming the Cao Dai. See My-Van, T. “Japan and Vietnam's Caodaists: A Wartime Relationship (1939-45).” *Journal of Southeast Asian Studies* 27, no. 1 (1996).

In the Philippines the two best known sources of armed support for the occupation were the Bureau of Constabulary, which operated from around mid-1942 to its collapse as an (in)effective fighting force in the fall of 1944, and the League of Patriotic Filipinos, known by its abbreviated Tagalog name Makapili (Tagalog: Kalipunang Makabayan ng mga Pilipino Japanese: *firipin aikoku dōshi kai*), which was founded in November 1944 and lasted until the collapse of the Japanese occupation in the summer of 1945. There were also a number of other organizations, often with overlapping memberships. The *Yōin* (要員) is occasionally mentioned, although its members were most often engaged as laborers along the lines of the various auxiliaries that Japan employed all over occupied territories, often termed *heiho* (兵補).<sup>24</sup> The leading historian on military collaboration in the Philippines, Motoe Terami-Wada, has also identified a number of other independent auxiliaries which were recruited locally and attached to Japanese units either for labor purposes but which sometimes participated in military action. Around the same time as the founding of the Makapili, a “New Leaders Association” was formed which had an armed division headed by Aurelio Alvero. Alvero’s treason trial was one of the few cases of a higher level figure receiving a conviction, which the Supreme Court affirmed in 1950. Artemio Ricarte, a leading nationalist veteran of the Philippine-American war, organized his own “Volunteer Army of Peace and Order of the Philippines.”<sup>25</sup> The two armies were merged in January of 1945 and, with the exception of a brief mention of the “Peace Army” of Ricarte, neither left much of a trace in the historical records. As Terami-Wada points out, this flurry of mobilization activity in late 1944 was as confusing to the

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<sup>24</sup> This organization was known to Filipinos, by a coincidence of pronunciation, as “United Nippon”

<sup>25</sup> The case of Aurelio Alvero is considered in some detail in Grant Goodman “Aurelio Alvero: Traitor or Patriot?.” *Journal of Southeast Asian Studies* 27, no. 1 (March 1, 1996): 95–103.

average Filipino as it is to historians now, and many came to see all of them, including the Makapili, as constituting a single overtly pro-Japanese army.<sup>26</sup>

The largest number and best, if still poorly equipped force under arms in the occupied Philippines was the Bureau of Constabulary (BoC). The BoC, or just the Constabulary as it was more frequently called, was in many ways the successor to the Philippine Constabulary it was modeled upon, which had a long prewar history dating back to 1901.<sup>27</sup> Indeed, two prewar heads of the Constabulary, Jose de los Reyes and Guillermo B. Francisco, were each made director, in turn, of its Japanese sponsored equivalent. The BoC was, however, structurally somewhat differently from its predecessor in that it included all local police and its military aspects were deliberately toned down by the Japanese military administration until the founding of the Republic in 1943.<sup>28</sup> The organization was established in early 1942, but it did not truly get off the ground until after the surrender of Bataan in April when a large number of Philippine prisoners of war, many of them with prewar Constabulary experience, fell into Japanese hands.<sup>29</sup>

The BoC was never designed to fight alongside Japanese soldiers across its far-flung battlefronts. It was exclusively used for domestic policing and counterinsurgency purposes. As in the case of Indian National Army recruits, it was created in large part by recruiting directly from POW camps. Neither Indians nor Filipinos escaped the hardships of Japanese prisoner of war camps,

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<sup>26</sup> Motoe Terami-Wada "The Filipino Volunteer Armies" in Setsuho Ikehata and Ricardo Trota Jose, eds., *The Philippines Under Japan: Occupation Policy and Reaction* (Quezon City: Ateneo de Manila University Press, 1999), 88-90.

<sup>27</sup> While focused more broadly on the rise of the surveillance techniques, the relationship between policing and politics and the legacies of colonial and postcolonial policing in the Philippines, the most detailed history of the Philippine Constabulary and related organs in the pre- and post-war periods is Alfred W. McCoy *Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State* (Madison: University of Wisconsin Press, 2009).

<sup>28</sup> Jose *Captive Arms*, 3-7. Military ranks were restored after the independence of the Republic.

<sup>29</sup> Most of the remainder were United States Armed Forces in the Far East soldiers who had served in either the prewar Philippine Division or the Philippine Scouts.

despite occasional better treatment than white prisoners, but many Filipino prisoners entered the camps directly from a harrowing death march that followed a long and hard-fought defense on the Bataan peninsula in the first months of 1942. In the Philippines, the prospects for continued survival in a diseased and starving prisoner of war camp were particularly slim, especially in Camp O'Donnell in Capas, where daily prisoner deaths reached 500 in May and were still 100 by July.<sup>30</sup> While Mohan Singh's volunteers in Singapore were promised glory at the liberation of a distant India still under British rule, Filipinos recruited into the BoC were offered only the opportunity to preserve a brutal Japanese military occupation over their home country that already had its own functioning domestic government and Constitution before the conquest.

The diary of a captured torpedo boat captain Ramon A. Alcaraz offers us a look at the recruitment into and "double game" of an officer in the BoC. Together with 1,400 other POWs, Alcaraz was enrolled in a "Rejuvenation Training" program led by Hamamoto Masakatsu, who impressed the prisoners with his, "Harvard English and American knowledge."<sup>31</sup> A variety of Japanese and Filipino guest speakers were brought in to offer seminars to the prisoners on the future of the newly liberated archipelago, including Claro Recto and Jose P. Laurel.<sup>32</sup> The POWs who "graduated" from the program with Alcaraz on August 10, 1942 were told by former Defense

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<sup>30</sup> 22,000 Filipinos and 1,500 American Prisoners of War died in the camp according to Office of the Provost Marshal General. "Cabanatuan Camp One: Report on American Prisoners of War Interned By the Japanese in the Philippines." (November 19, 1945). The reports of daily deaths are also found in the July 14, 1942 entry in the diary of former POW Ramon A. Alcaraz. Alcaraz passed away in June, 2009, but his website, where he posted entries from his wartime diary is still accessible through the Internet Archive: <http://web.archive.org/web/20091027033815/http://geocities.com/comralcaraz/> accessed June 4, 2011.

<sup>31</sup> More on the "Rejuvenation" program in Jose *Captive Arms*, 4. In an interview, Hamamoto tells historian Motoe Terami-Wada that, without any formal appointment, he was able to assume control of a POW camp, though it is not clear which one. Terami-Wada, Motoe. "Lt. Shigenobu Mochizuki and the New Philippine Cultural Institute." *Journal of Southeast Asian Studies* 27, no. 1 (March 1, 1996), 118. At the close of the war Hamamoto was lauded for speeding up the trial of General Yamashita Tomoyuki's by serving as his interpreter during his war crimes trial. A. Frank Reel, *The Case of General Yamashita* (New York: Kessinger Publishing, 2010), 145. Hamamoto did graduate from Harvard College in 1927, returning there for a reunion in 1952.

<sup>32</sup> Alcaraz diary, 3 Aug., 1942.

Secretary Teofilo Sison, the only leading political collaborator to be convicted of treason after the war, that all of them were expected to dedicate themselves to the new Philippine government.<sup>33</sup> Receiving his conditional release papers, Alcaraz was ordered to report for training at a police academy in Manila in 20 days.<sup>34</sup> Within three months of his transition from POW to a BoC officer, however, Alcaraz had attained a parallel guerrilla rank of Major in control of elements of the 14<sup>th</sup> infantry resistance forces in the province of Nueva Vizcaya.<sup>35</sup> This guerrilla organization had just suffered a severe setback after the Japanese capture of its leader Colonel Guillermo Nakar in November.<sup>36</sup> The example of the execution of this same Nakar, after refusing to collaborate with the Japanese, would find mention in postwar amnesty debates in the legislature. Only a few days after his appointment in the resistance, Alcaraz records a meeting with his provincial counterpart, the head of Japanese military police, at which he promised to do his part in the work of crushing the local remnants of the very guerrilla organization he had just assumed control over.<sup>37</sup>

In early 1943, we find Alcaraz claiming that he distracted the local pro-Japanese Governor of the province, the chief of the local Japanese military police and the head of the Japanese Army Garrison by pouring his efforts into developing new neighborhood associations, which were designed to promote security through mutual responsibility. Instead, Alcaraz focused on such tasks as securing

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<sup>33</sup> The announcement of the “release” of all Filipino prisoners of war on August 17, 1942 though they were not all released at the same time and generally directly into employment with the occupation government in some capacity. A. V. H. Hartendorp, *The Japanese Occupation of the Philippines* (Manila: Bookmark, 1967) v. 1, 485-6. Alcaraz does not mention taking the oath that released war prisoners were often required to take. The text of this oath included a pledge to, “submit to the Japanese Military Administration and do my best to serve for the realization of the objectives of the said administration.” The full text of the oath is found in *ibid.*, 487-8.

<sup>34</sup> *Ibid.*, 10 Aug., 1942.

<sup>35</sup> *Ibid.*, 5 Nov., 1942.

<sup>36</sup> The 14th infantry guerillas were also the unit

<sup>37</sup> *Ibid.*, 16 Nov., 1942.

more Japanese instructors to teach its members morning radio calisthenics.<sup>38</sup> Although the participation of Filipinos in neighborhood radio calisthenics or in various parades and performances helped contribute to an image of tranquil cooperation with the occupier, according to another wartime diary, at least one local Japanese official was not fooled into thinking this implied any enthusiasm for the Japanese cause. Watching one such parade, on the anniversary of the fall of Bataan, his Filipino companion told him ninety per cent of the Filipinos now understood Japan's objective to unify Greater East Asia. The Japanese official allegedly responded,

You are mistaken,—I am afraid that forty-five per cent of the population continues to be pro-American, five per cent are pro-Japanese, while the remaining fifty per cent are comedians.<sup>39</sup>

Later the same year in November 1943, the same diarist, Marcial Lichauco records a conversation between his wife Jessie and a BoC officer on patrol. She asked the Constabulary officer what they would do when the American troops returned and the Japanese called on them to fight. The officer reported that several of his fellow BoC companions had asked their commanding officer that very question and were told that, “When that happy day comes it would be a case of every man for himself and good luck to all of us.”<sup>40</sup> This was also the expectation of U.S. G-2 military intelligence which, in a report compiled in June, 1943, recorded guerrilla reports claiming that any

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<sup>38</sup> Ibid., 4 Jan., 1943.

<sup>39</sup> In entry for April 12, 1943, Marcial Primitivo Lichauco, *“Dear Mother Putnam”; a Diary of the War in the Philippines* (Manila, 1949), 90. Lichauco, from a prominent Chinese mestizo family was a lawyer who is reputedly the first Filipino to graduate from Harvard Law School, ambassador to the UK, and participant in the Osmeña-Roxas Independence mission to the US in 1931, and later biographer of Manuel Roxas.

<sup>40</sup> Entry for 10 Nov., 1943. Ibid., 137

attack on the occupied Philippines that “looks as if it might be successful” would result in most of the Constabulary turning against the Japanese.<sup>41</sup>

It is not terribly surprising, then, to find that all sources agree that the wartime BoC was an ineffectual, disloyal and corrupt organization. The Japanese military placed little or no confidence in its new Constabulary, and the widespread disloyalty of its officers did not go unnoticed. The life of its director Guillermo Francisco, who was suspected by the Japanese of working with the guerrillas, was only saved with the help of President Laurel, and his troops were poorly equipped and frequently subject to humiliation and mistreatment.<sup>42</sup> As we have already mentioned, the replacement for Francisco, General Paulino Santos, was also reported to have played a part in the organization of guerrillas but he also wrote eloquent letters to a friend in the guerrilla movement, trying to persuade him to surrender and collaborate.<sup>43</sup> He was eventually arrested by the Japanese and died in their custody.

Most soldiers of the BoC did refuse to fight the returning Americans in the fall of 1944 and deserted in large numbers; its total strength dropping from 18,000 in August to 7,500 in December before the Constabulary was completely disarmed in the spring of 1945.<sup>44</sup> The fact that many BoC officers were widely engaged in the “double game” before their mass desertion is difficult to contest. At the very least they were hedging their bets. Not only BoC officers themselves or others who serve

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<sup>41</sup> General HQ United States Army Forces, Pacific Military Intelligence Section, General Staff Intelligence Activities in the Philippines during the Japanese Occupation: Documentary Appendices Volume II Intelligence Series, “G-2 Information Bulletin: Report on Conditions in the Philippine Islands” (June 1943), 25.

<sup>42</sup> Jose *Captive Arms*, 12.

<sup>43</sup> See Jose T. Ricardo *World War II and the Japanese Occupation* (Quezon City: University of the Philippines Press, 2006), 193.

<sup>44</sup> Jose *Captive Arms*, 18. On the desertions of the BC from around September, 1944, see also Elmer Norton Lear, *The Japanese Occupation of the Philippines, Leyte, 1941-1945* (Ithaca: Cornell University Press, 1961), 217. Recto claims that Laurel, aware of the desertions, allowed up to 75% of Constabulary officers to freely desert. Claro M. Recto, *Three Years of Enemy Occupation: The Issue of Political Collaboration in the Philippines* (Manila: People’s Publishers 1946), 56.

the occupation government but also many guerrilla leaders confirmed that a cooperative or at least a non-hostile relationship existed between some units of the resistance and elements in the Constabulary.<sup>45</sup> The ineffectual patrols of the BoC were usually preferred by the resistance to the more attentive ones by the Japanese. At the same time it was equally clear that, prior to the fall of 1944, the BoC was increasingly active in Japanese-led mopping up operations and general “pacification” campaigns carried out at the behest of the Japanese military or by order of other Filipino government officials.<sup>46</sup> The same U.S. G-2 military intelligence report which recorded the high potential of the BoC to turn on the Japanese also noted their responsibility for the deaths of USAFFE guerrillas and that “to a limited extent” they had been employed as “undercover agents and spies” by the Japanese.<sup>47</sup> Japanese activity reports on mopping-up work collected by the American forces, while slim on details, are full of references to punitive raids being carried out, “in cooperation with the police,” “aided by the police,” and “working [in] conjunction with the police unit.”<sup>48</sup>

The many Japanese soldiers who came to the Philippines with years of counterinsurgency experience in China would not have been particularly surprised at the duplicity of the armed Filipinos who joined them in suppressing the resistance.<sup>49</sup> Though generally employed under less

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<sup>45</sup> See for example Ray C. Hunt and Bernard Norling, *Behind Japanese Lines: An American Guerrilla in the Philippines* (Lexington: University Press of Kentucky, 2000), 107.

<sup>46</sup> Jose *Captive Arms*, 7. Manuel E Buenafe, *Wartime Philippines* (Manila: Philippine Education Foundation, 1950), 226.

<sup>47</sup> “G-2 Information Bulletin,” 29. “How to determine who is or who is not pro-enemy in his inclinations and efforts against the troops still offering resistance to the enemy,” it added, “is a problem of major proportion.”

<sup>48</sup> The term “police” refers to the Bureau of Constabulary, since the two were essentially merged by the Japanese by wartime. These examples are taken from a collection of translated mopping up reports from early 1944. General Headquarters, Far East Command, Military Intelligence Section, General Staff, Allied Translator and Interpreter Section, South West Pacific Area Current Translations No. 146 (January 31, 1945).

<sup>49</sup> Among the Japanese forces of the 14th and 16th Armies that invaded the Philippines were the 16th and 18th infantry divisions which both fought in North China, Shanghai, and most infamously, the attack on Nanjing, as well as the 4th, 5th, and 21st infantry divisions which had all been fighting in the Sino-Japanese war since at least 1938.



coercive conditions, Japanese allied “puppet armies” of the new Nationalist regime and earlier autonomous governments in China were no more dependable and equally liable to switch sides when an appropriate opportunity presented itself. However, accounts of individual acts of defiance, cases of BoC informing guerrillas of upcoming attacks, the ignoring of orders, or any number of interventions by BoC officers to save suspected guerrillas from execution at the hands of the Japanese military police can easily distract us from the fact that almost every “double game” had two sides. There were strong incentives to preserve anecdotes from one game and not of the brutality required to sustain the other. It is easy to get mired in the task of sorting patriots from opportunists or the vengeful from the true believers in a Greater East Asia. At the very least, however, the role played by the BoC in wartime atrocities and evidence of postwar continuities, as we shall see, offer plenty of reasons for the historian to question the remarkable imbalance in the postwar allotment of retribution against military collaborators.

If the BoC is portrayed as the reluctant ally biding its time or actively subverting the Japanese occupation, the Makapili invokes, however inaccurately, the image of the devoted turncoat, or as the leading historian of Philippine-Japanese relations Grant Goodman once described them, a “fanatical, self immolating Filipino militia.”<sup>50</sup> However, much like the reviled Milice of Vichy France, the image of the passionately committed collaborationist is found side-by-side with that of the opportunism of a ruffian or the ignorance of a teenager such as the embittered peasant Milice recruit of the 1974 French film “Lucien Lacombe.” In the 1968 film, “Manila, Open City,” about the 1945 battle of Manila, which came complete with a narrator supplying historical commentary for each section, a Filipino guerrilla tells his American companion that the Makapili were, “a few local punks and ex-cons...” However, the roots of this organization reaches much farther back than its founding

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<sup>50</sup> Grant K. Goodman, *Four Aspects of Philippine-Japanese Relations, 1930-1940* (New Haven: Southeast Asia Studies, Yale University, 1967), 182.

in November 1944. Many of its members were part of the Ganap political party or movement, and its older members were associated with the Ganap's predecessor, the Sakdal rural reform and nationalist movement which was active from 1930 up until the movement's failed uprising in 1935. The names Sakdal and Ganap are almost synonyms, the former meaning "the most" or "extremely", and the latter meaning "entirely" or "completely," but Sakdal also has the meaning of "to accuse."<sup>51</sup> The Sakdal movement was founded in June 1930 following two racially charged incidents between Filipinos and embraced the goal of attaining immediate independence from the United States.<sup>52</sup> The movement's charismatic leader was the poet and civil servant Benigno Ramos, who initially directed the energies of the movement towards "accusing" the United States of enslaving the Filipino people and its Filipino collaborator regime of starving the poor through the movement's key publication *Sakdal*. Spreading rapidly through Luzon, in the years that followed the movement organized a boycott of foreign goods, raised money for the independence revolutionary in Japanese exile, Artemio Ricarte, supported a Gandhi-inspired civil disobedience movement toward the goal of independence, and in October, 1933 founded a political party which further promised radical economic reforms and the complete transformation of society.<sup>53</sup> In the 1934 elections it sent all three of its congressional candidates to the House and won numerous other positions at the provincial and municipal levels. After failing to prevent the transition of the Philippines to Commonwealth status, it

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<sup>51</sup> Angelito L. Santos et al. *Under Japanese Rule: Memories and Reflections* (Quezon City: Foundation for Nationalist Studies, 1992), 34. Terami-Wada argues that many members believed the name came from a Tagalog bible verse, James 1:4 "And let endurance have its perfect result, so that you may be *perfect* and *complete*, lacking in nothing." In Tagalog, perfect and complete are translated "sakdal at ganap" "The Sakdal Movement" *Philippine Studies* 36 n. 2 (1988), 133. There are a number of differing accounts on the origin of the name.

<sup>52</sup> My summary of the movement's history here is based on Motoe Terami-Wada's article "The Sakdal Movement."

<sup>53</sup> Artemio Ricarte's relationship to Japan is outlined in Goodman, Grant K. "General Artemio Ricarte and Japan." *Journal of Southeast Asian History* 7, no. 2 (September 1, 1966): 48–60. His ideology is examined in greater detail in Satoshi Ara 荒哲, 「リカルテ將軍の政治思想について」 [On the Political Thought of General Ricarte] *Ajia Kenkyu* 54, no. 1 (January 2008), 62–77.

organized a dramatic and violent uprising that took place over a single night in May, 1935 and collapsed immediately after.<sup>54</sup> Ramos was already in Japan at the time of the uprising but returned briefly to the Philippines in 1938. Despite a cordial meeting with Commonwealth president Quezon in Japan after which he reversed his longstanding opposition and pledged support for Quezon's Nacionalista party, Ramos was arrested immediately upon his return. While on bail and awaiting trial he founded a new political party, Ganap, composed of those remaining followers who could stomach his new alliance with the elites, but he was again arrested for fraud and illegal solicitation of funds in 1939.<sup>55</sup> Ramos was finally released from prison by the Japanese occupation forces in April 1942, only after the military administration had established a new occupation regime composed of prewar elites.

Why did Japan not immediately take advantage of this figure with a long history of opposing American imperialism? The answer is found in a unique characteristic of Japan's Philippine experience. If there was one thing that the best known wartime collaborators with Japan had in common, it was that they were on the down and out. Benigno Ramos and Artemio Ricarte in the Philippines, Subhas Chandra Bose and Rash Behari Bose from India, Ba Maw and Aung San in Burma, Sukarno and Mohammad Hatta in the Dutch East Indies, Ibrahim Yaacob in British Malaya, former emperor Puyi and Wang Jingwei in China had failed to achieve their goals, whether in the political arena or through revolution. Whatever their optimism, they faced the possibility of a future on the margins. Ricarte, Aung San, and Rash Behari Bose fled or were sent into exile, ending up in Japan where they found support from radical pan-Asianist organizations. Before Japan restored his empire in Manchurian miniature in 1932, Pu Yi spent more than half a decade under its protection in

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<sup>54</sup> David R. Sturtevant, "Sakdalism and Philippine Radicalism." *The Journal of Asian Studies* 21, no. 2 (February 1, 1962): 199–213.

<sup>55</sup> For more on the career of Ramos see Terami-Wada, M. "Benigno Ramos and the Sakdal Movement." *Philippine Studies* (1988) 36, 427–442 and the chapter on Ramos in Grant K. Goodman, *Four Aspects*, 133–194.

the Tianjin Japanese concession. Ba Maw and Ramos were languishing in prison until they were released by the Japanese and both Sukarno and Hatta were freed from their remote domestic exile following the conquest of the Dutch colony. After being expelled from his position as editor of the Malay nationalist newspaper *Majlis*, Yaacob sought out support and funding from both British and Japanese sources in exchange for becoming an espionage agent, and was arrested by the British at the outbreak of war. Subhas Chandra Bose and Wang Jingwei were both charismatic, widely respected, and powerful contenders to become the leading political figure in their respective nations, but the rise of each was eventually thwarted by his political nemesis.<sup>56</sup> For Bose it was Gandhi's opposition to his election as Congress President in 1939; for Wang it was Chiang Kai-shek's purge of Wang followers at the Third National Congress of the Nationalist party in 1929. Nowhere in the territories it occupied did Japan so successfully forge an alliance with almost all of the ruling political elites as it did in the Philippines.<sup>57</sup>

Recognizing the advantages of working, for once, with the mainstream of political power, the Japanese military administration in the Philippines was reluctant to permit unpredictable and radical revolutionaries to become its primary connection to the people and more importantly, the leaders of armed military organizations. Thus, while it released Ramos and permitted Ricarte to return from exile, and Japanese troops did arm some of the generally pro-Japanese Ganap members in the early period of the occupation, both remained relatively marginalized figures.<sup>58</sup> In fact, the

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<sup>56</sup> Bose was under house arrest when he fled to Germany, arriving there in April, 1941 and then traveling on to Japanese occupied Singapore in 1943. Wang Jingwei left suddenly for Hanoi in late 1938, leaving Nationalist China in one of its darkest moments of retreat.

<sup>57</sup> Two other complicated exceptions are Indochina and Thailand. In Indochina the political infrastructure of the now Vichy French colonial regime was kept in place. Thailand was officially an ally of Japan and though 'host' to tens of thousands of Japanese occupation troops, it did not have its regime replaced by the Japanese.

<sup>58</sup> Terami-Wada, "Benigno Ramos and the Sakdal Movement," 70. Benedict J. Kerkvliet, *The Huk Rebellion: a Study of Peasant Revolt in the Philippines* (Berkeley: University of California Press, 1977), 65.

creation of a single political party, called the Kalibapi, in December 1942, far from being a vehicle to organize collaborating elites into a single political machine, was, some argued, primarily a means to keep Ramos and his followers in line under the guidance of its director-general Benigno S. Aquino, an establishment figure with decades of legislative experience. From early on in the occupation, the head of the pre-Republic Philippine Executive Commission, Jorge Vargas, had urged the Japanese to outlaw the Sakdal-Ganap movement.<sup>59</sup> Occupation officials were also concerned. In his 1943 notes from a research trip to Manila together with leading intellectual voices of the Greater East Asia Co-prosperity Sphere, Rōyama Masamichi (蠟山政道) and Miki Kiyoshi (三木清), Professor Takeuchi Tatsuji (武内辰治) quotes Shiohara Tamotsu, the executive director of the Philippine Society of Japan on the issue,

Many Sakdalistas were utilized in the Manila area by the Japanese army. The army people, however, did not know the real nature of the Sakdalistas. We have reason to be cautious in dealing with them, particularly in the Laguna area. Provided with arms, the Sakdalistas, instead of combating banditry, did not hesitate to resort to extortion against good citizens in the region. They even levied private taxes on the inhabitants...The founding of the Kalibapi organizations was primarily aimed at the liquidation of the Sakdal party.<sup>60</sup>

During a meeting with the wartime education minister Camilo Osias, the wartime education minister, Takeuchi found him offering a similar explanation, “[The Kalibapi] was conceived as a formula to incorporate the Sakdalistas. It lacked unity at its inception; it included many factions. Ramos is a good orator, but he has no brains. His subordinates have less.”<sup>61</sup> In their study on the Philippine polity that resulted from their research trip, Takeuchi and Rōyama concluded that while

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<sup>59</sup> Hernando J Abaya, *Betrayal in the Philippines* (Quezon City: Malaya Books, 1970), 35.

<sup>60</sup> In Takeuchi's diary entry for January 9, 1943. Masamichi Rōyama, Tatsuji Takeuchi *The Philippine Polity: a Japanese view* (Yale University, Southeast Asia Studies, 1967), 219.

<sup>61</sup> Diary entry for September 8, 1943. *Ibid.*, 275.

the radical peasants who made up the Sakdal movement were not communists, their approach was an example of a “deformed politicization of the land question” and were a mass movement “propelled by a series of farm riots and agitations” which stood no chance at developing into a national political party, and thus “superior talents were not attracted to this organization.”<sup>62</sup> While the Bureau of Constabulary was far from reliable, Ramos and the radical reform movement he led were not seen as a viable alternative until the desperate days following the American landings of late 1944. It was in this new environment of urgency that the Makapili was born with Ramos as its executive general, Ricarte as an advisor, the openly pro-Japanese Pio Duran as its vice-supremo and President Laurel, who only reluctantly agreed to recognize the organization in the face of Japanese threats, occupying a token position as honorary supreme advisor.<sup>63</sup>

In her diary entry noting the formation of the Makapili Pacita Pestaño Jacinto summarized the leadership of the new organization:

Ricarte, the returned exile, is in his rightful element. He represents the man who was born a rebel, who will tug at a leash no matter how gentle, no matter how long. Pio Duran should have been born a Japanese, not a Filipino. The greatest danger lies in Ramos, the communist. The agrarian question has always been an issue. It is the quickest, most effective weapon for the breeding of discontent. A glib speaker needs nothing concrete. He has only to paint word pictures of a Utopia and the deed is done. Ramos is a man of the masses. He speaks their language, he knows which are the chords that, when plucked, will ring true.<sup>64</sup>

The day after its official inauguration on December 8, 1944, the *Tribune* announced that, although the Japanese could fend off the American invaders by themselves, “the national self-respect and the ardor of our traditional patriotism do not allow the Filipinos...to just sit by while our cities

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<sup>62</sup> In their “Report of the Research Commission of the Philippines” Ibid., 121-2.

<sup>63</sup> Terami-Wada “Volunteer Armies”, 82

<sup>64</sup> Entry for December 10, 1944. Pacita Pestaño- Jacinto, *Living With the Enemy: a Diary of the Japanese Occupation* (Anvil Pub., 1999), 251.

and civilian centers are being bombed and burned and our helpless fellow countrymen driven to untold economic misery or otherwise mercifully saved by shrapnel and machine guns strafing from further torture. Hence, the Makapili.”<sup>65</sup> Instead of building a full army, however, the Makapili was to focus on the tasks of preserving peace and order against the “enemy from within” and securing food supplies. Their anthem declared that, “we are soldiers, you and I are soldiers / [We are of] the Asian race ... the Makapilis are the protectors of the nation's children...”<sup>66</sup>

The new Makapili were heavily concentrated in Manila, and the nearby Laguna and Rizal provinces, a fact confirmed by treason cases which mention the Makapili, the majority of which come from Laguna province (See Map 1) and especially the city of Santa Rosa. According to Terami-Wada, some ninety per cent of the founding members of the Makapili were formerly Yōin who in turn had many Ganap members.<sup>67</sup> This is again consistent with the areas of Luzon where the Sakdal-Ganap movements were most concentrated in the 1930s. The total number recruited into the organization does not seem to have exceeded about 5,000.<sup>68</sup> In interviews with former Makapili, some insisted that they were not volunteers but were selected or conscripted into the organization. Others claimed they were Ganap members who, despite having no desire to continue to support the Japanese, found

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<sup>65</sup> *The Tribune* (December 9, 1944), quoted in Recto *Three Years*, 58.

<sup>66</sup> Quoted in Terami-Wada “Volunteer Armies,” 82.

<sup>67</sup> Terami-Wada, “Volunteer Armies,” 84. Interviews with former Makapili by Gil G. Gotiangco also confirms that not all of them were former Ganap members. Gil G. Gotiangco, “Retelling and Rewriting a Sad Refrain (Laguna during the Japanese Occupation)” *The Journal of History* 53 (2010), 317.

<sup>68</sup> Terami-Wada, “Volunteer Armies” *ibid.*, 83. Steinberg, *ibid.*, 108. Duval A. Edwards, a former US Counter-Intelligence Corps officer, estimates 10-20,000 as the final Makapili strength but elsewhere also uses the 5,000 figure. His account is full of other inaccuracies and it is unclear where this estimate comes from. Duval A. Edwards, *Jungle and Other Tales: True Stories of Historic Counterintelligence Operations* (Tucson: Wheatmark, Inc., 2007), 92.

themselves associated with the Makapili and were forced to flee with the Japanese to escape capture and liquidation.<sup>69</sup>

It is difficult to establish what, in fact, the Makapili did and did not do since they were only active in the confused last months of the Japanese occupation when its forces were already in retreat and rarely stayed in one place for very long. One report finds them engaged in a suicide attack with bayonets on Americans who had just landed in Lingayan, while in a 1973 interview, Japanese Major General Utsunomiya Naokata (宇都宮直賢) insisted that, although they engaged in some combat east of Manila, the Makapili mostly dug trenches, served as guides, and collected intelligence similar to other *heiho* auxiliaries.<sup>70</sup> Despite the relative scarcity of information about their activity as an organization, their imprint on historical memory and in the testimony of treason trials after the war is considerable. The sign that is Makapili is “sticky,” in that a range of dark memories about the occupation have become attached to it: most of all in a role as particular kind of dreaded informer known as the “magic eye.”

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<sup>69</sup> Terami-Wada “Volunteer Armies,” 84-86 and Gotiancgo, “Retelling and Rewriting a Sad Refrain”

<sup>70</sup> Terami-Wada “Volunteer Armies,” 84. Utsunomiya claims from Lebra, *Japanese-Trained Armies*, 143.



*Zona and Magic Eyes*

The most frightening thing I remember was the sight of the Makapilis with bayong (native bags weaved from the fronds of a native palm tree called buri) over their head, with two holes for their eyes. I didn't see them very often, but whenever I saw them, there were always were many men strung together with some guarded by Japanese. They betrayed their town mates by pointing them out to the Japanese.<sup>71</sup>

I watched a spy with a bayon over his head so that he would not be recognized, point to a guerillero, Gonzalo Navarro...Spies with bayons over their heads, which the Tagalogs called Makapilis, we called the Quinta Columna, the fifth column of the Japanese—traitors, spies.<sup>72</sup>

Sometimes the Japanese had Filipinos with hoods over their heads come into a room of people who had been rounded up during a zona and simply point at those who were "guilty." "These [hooded] people," explained a man in San Ricardo, "were what we called makapili."<sup>73</sup>

I also discovered the identities of the Makapilis who hid their faces with bayong (bags). After the enemy conducted raids, I tailed these 'stool pigeons' when they returned to their bivouac with their 'masters.' The moment these bastards left their encampment, we, the Trigger Squad, killed them.<sup>74</sup>

Though it was a short-lived organization with few members only active in a small geographical range, the historical memories of the Makapili has become inextricably tied to the image of the treasonous informants who accompanied the Japanese on their counterinsurgency raids throughout the occupation period. Both in oral histories collected long after the war, in the testimonies of victims and witnesses in the early postwar trials, and in films and other postwar media, the term Makapili has broadened to be used interchangeably with traitor, spy, and informant. It is

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<sup>71</sup> Eduardo Dizon, a boy who would have only been 7 years old in 1944, quoted in Angelito L. Santos "Gleanings from a Cruel War" in Santos et al. *Under Japanese Rule*, 33.

<sup>72</sup> Interview with Alice Patiño and Artemio Pama quoted in Ibid., 101.

<sup>73</sup> Kerkvliet *Huk Rebellion*, 66.

<sup>74</sup> Interview with Marcelo San Diego quoted in Angelito L. Santos "Gleanings from a Cruel War" in Santos et al. *Under Japanese Rule*, 240.

referred to in places where the Makapili was never active, and in periods of the occupation long before the organization was founded. The evil which the name invokes, however, cannot be fully appreciated without considering the association of the Makapili with one particular kind of hooded informant known as the “Magic Eye.” In the Philippines, the Magic Eye technique was sometimes employed when assembling the entire population of a village or an urban district in a practice the Filipinos referred to as “zoning” (*zona* or *sona*) during which each man and, in some accounts, woman was lined up in front of, or had to file past an “Eye” who nodded or pointed fingers at guerrilla suspects, thereby condemning them to a death at the hands of a Japanese sword or bayonet or at least arrest, interrogation and torture.

The Magic Eyes were the darkest shadow of collaboration in the Philippines. In the municipal and national offices reluctant bureaucrats, politicians and elites are mostly described as busily ignoring or diluting Japanese directives that came their way, all the while sending intelligence to the guerrilla groups in their area. Meanwhile, in the villages and rural areas, where immediate proximity to violence was unavoidable, the consequences of collaboration were most apparent in the example of these anonymous characters. In film, these frightful figures can be found in the early postwar Hollywood film shot in the archipelago “An American Guerrilla in the Philippines” (1950) and more recently in the 2001 Philippine submission for Best Foreign Language Film at the Academy Awards, “In the Bosom of the Enemy” (“Gatas... Sa dibdib ng kaaway”), the 2004 film “Aishite Imasu Mahal Kita” (I love you), and, though replacing the *bayong* bag with a white mask, in the 2005 U.S. film, “The Great Raid.”

The Japanese use of hooded informants was not limited to the archipelago. It is also frequently mentioned in accounts of *sook-ching* (*shukusei*, *suqing*) “mopping-up” campaigns, often directed against ethnic Chinese populations in occupied Malaya and in Singapore, where the Magic

Eyes were known as the “hooded terrors.”<sup>75</sup> Nor was their employment a Japanese innovation. The use of hooded informants in identification parades, and the hatred their use engendered is found in countless other historical cases and tied directly to the history of witness identification. In German occupied Greece, the occupiers assembled the population in a practice known as *bloccos* and had hooded informants point out EAS/ELAS guerrilla suspects.<sup>76</sup> During the Mau Mau Rebellion in Kenya, the British employed Kikuyu loyalist informers called *gikunia*, named for the sack which covered their entire bodies, to point out suspected Mau Mau rebels.<sup>77</sup> In Chile, in Guatemala, and elsewhere in Latin America the hooded *encapuchados*, often guerrillas who had succumbed under torture, pointed out their fellows.<sup>78</sup> In Punjab and in Kashmir, the Magic Eyes were called “cats” (from “concealed apprehension technique”) and were used by the Indian police and military.<sup>79</sup> In the Philippines, however, the eyes hidden behind the *bayong* bag have reached a particularly powerful status as a historical symbol, and as the imagined uniform of the Makapili. The practice of “zoning” that in some cases employed hooded informants was used by Japanese forces throughout the occupation of the Philippines, long before the founding of the Makapili in December, 1944, and well beyond the central Luzon plains where they were most active. One memoir by a lawyer and later historian makes its first reference to *zona*, though no informer appears, in an anecdote from the very

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<sup>75</sup> N. I. Low and H. M. Cheng, *This Singapore: Our City of Dreadful Night* (City Book Store, 1947), 48. Kee Onn Chin, *Malaya Upside Down* (Singapore: Jitts, 1946), 21.

<sup>76</sup> Mark Mazower, *Inside Hitler's Greece: The Experience of Occupation, 1941-44* (New Haven: Yale University Press, 1993), 131.

<sup>77</sup> David Anderson, *Histories of the Hanged: The Dirty War in Kenya and the End of Empire*, (New York: W.W. Norton, 2005), 387. Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya*, (New York: H. Holt, 2005), 69.

<sup>78</sup> Mary Helen Spooner, *Soldiers in a Narrow Land: the Pinochet Regime in Chile* (University of California Press, 1999), 59. David Stoll, *Between Two Armies in the Ixil Towns of Guatemala* (Columbia University Press, 1993), 62.

<sup>79</sup> Robert Wirsing, *India, Pakistan, and the Kashmir Dispute: on Regional Conflict and its Resolution* (Palgrave Macmillan, 1998), 155. Jeffrey A. Sluka, *Death Squad: the Anthropology of State Terror* (Philadelphia: University of Pennsylvania Press, 2000), 83.

first month of the Japanese occupation: January, 1942.<sup>80</sup> Despite the fact the connection between the Makapili and the “magic eye” was widespread, it was rarely made in the court. Though there are many references to pointing informers and even the Magic Eye, the *bayong* masked terrors are less frequently mentioned in the case summaries for trials of Makapili. Instead, the tell-tale signs of a Makapili, from the perspective of testifying witnesses, were the wearing of a Japanese military cap, a uniform, or merely an armband with Japanese writing upon it.

As the opening quotes of this section suggest, the Magic Eye ‘Makapili’ are often depicted without any thought given to the coercion that may have been brought to bear upon them. By contrast, in her diary of the occupation, Pacita Pestaño Jacinto offers a description of zoning in late 1944 Manila that imagines the perspective of the Magic Eye in a way that is more consistent with the similar use of hooded informants around the world:

Without warning, without explanation, on the strength of mere suspicion, one or more street is cordoned, bayonets flash, soldiers break into houses and all males regardless of age or profession are caught and taken away in trucks. Assembled in the public square they are forced to stand under the sun. Then a man hooded in black is brought out. Through small slits in the hood, he is forced to watch while each man parades slowly in front of him. This man is usually a guerrilla who has been caught and tortured and beaten and as a last punishment is designated to act as the magic eye. As the magic eye, he is forced to point out from among those who have been “zoned” the ones he suspects of being members of guerrilla bands. He himself does not know, but he is forced to point out someone, anyone. The threat of a second torture proves too much. He closes his eyes and his wavering finger points once, twice, thrice. It depends on how thirsty for blood the Japanese officer happens to be.<sup>81</sup>

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<sup>80</sup> Antonio M Molina, *Dusk and Dawn in the Philippines: Memoirs of a Living Witness of World War II* (Quezon City: New Day Publishers, 1996), 68.

<sup>81</sup> Entry for November 2, 1944. Jacinto, *Living with the Enemy*, 243. This is similar to the testimony of a Taiwanese interpreter for the Japanese military police in 1946 about the “hooded terrors” there who claimed that, “The Kempei-tai ‘acquired’ informers by first having them arrested as Communists and then coercing them into informing on others” “Japs’ Statements at Penang Trials” *The Straits Times*, 20 September, 1946, 5. <http://newspapers.nl.sg/Digitised/Article/straitstimes19460920.2.57.aspx> (Accessed October 2, 2011).

*Toward a Limited Amnesty*

The Bureau of Constabulary, the Makapili, and the unforgettable image of the Magic Eye represented the reality of the Japanese occupation and military occupation on the ground. These working relationships between Japanese and Filipinos, sometimes marred by coercion and a complex political background cannot be completely separated from the elite levels of collaboration because it was the occupation government's leading officials in the field of security and within the Constabulary who helped organize and manage the cooperation taken place at the lower levels. However, almost none of these figures would face trials for the "command responsibility" they bore in the postwar, or face final conviction in treason trials.

One of the most basic reasons why all the leading political collaborators were so quickly rehabilitated both politically and in memory is that none, save the very first to come to trial, were convicted of treason.<sup>82</sup> Ricarte and Ramos, did not survive into the postwar. Others, such as Aquino, did not live to see the conclusion of their trial. The trials of some, including Laurel, were delayed until the amnesty was passed. Many others were saved by the strict two witness rule inherited from American treason law. As clarified in a key 1944 U.S. Supreme Court ruling, "every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses."<sup>83</sup> It was understandably difficult for Solicitor General Lorenzo M. Tañada to find the testimony of two witnesses to the signing of a treasonous document, or the issuing of a treasonous order when such acts were often carried out in the relative privacy of an office. The overwhelming case load did not help move the process along, either. The special People's Courts established by

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<sup>82</sup> The exception was a wartime Minister of Justice and Minister of Home Affairs, Teofilo Sison, who was sentenced to life in July, 1946. Steinberg, *Philippine Collaboration in World War II*, 136.

<sup>83</sup> In the majority opinion by Robert H. Jackson in the 5-4 US Supreme Court ruling of 1944, *Cramer vs. U.S.* Paul Finkelman, Melvin I. Urofsky, and United States. Supreme Court, *Landmark decisions of the United States Supreme Court* (Washington DC., CQ Press, 2003), 219.

Commonwealth Act No. 682 in September, 1945 to handle all occupation period violations of Article 114 of the Revised Penal Code, that is, the crime of treason, consisted of a mere five courts with three judges each.

Finally, even without the amnesty to come many collaborators had little to fear from the People's Court after it ruled that the holding of government offices during the Japanese occupation neither constituted an overt act rendering “aid and comfort” to the enemy nor provided sufficient evidence of adherence to the enemy—the two required components of any treason conviction in the Philippines as it is in the United States. This was a marked contrast with laws for the punishment of collaboration with Japan in, for example, Nationalist or Communist controlled territories of China or in South Korea, for example, where high office holders were explicitly targeted, even if mitigating clauses offered judges great flexibility.<sup>84</sup> In the Philippines, the bar for adherence to the enemy was set so high that it required the prosecution to virtually step into the hearts of the accused and prove they were completely empty of patriotic feeling. Words spoken in praise of the Japanese Empire or calling for guerrillas to lay down their arms were but the moving of a helpless puppet's lips; war materials sold to the enemy were just the everyday business of an honest merchant. As long as a collaborator spoke other words in private against the occupier or contributed some percentage of their profits to the resistance, the possibility of “feigned cooperation”—the favorite term of the accused and judges alike, could not be ruled out. In his account of the progress of the People's Court up to the amnesty, David Joel Steinberg traces the “growing sympathy” of the courts for claims of “justifying circumstances,” until finally procedural issues came to dominate each case in the final

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<sup>84</sup> See “Chuli hanjian anjian tiaoli” (Nov. 23, 1945), “Chengzhi hanjian tiaoli” (Dec. 6, 1945) in Nanjingshi Dang’anguan ed. *Shenxun Wangwei hanjian bilu* (Nanjing: Fenghuan chubanshe) v. 2, 1441-4 for Nationalist Chinese laws and “Shandongsheng chengzhi zhanfan ji hanjian zanxing tiaoli” in Shandongsheng Dang’anguan ed. *Shandong geming lishi dang’an ziliao xuanbian* (Jinan: Shandong renmin chubanshe) v. 15 214-15, for example of Communist Party regulations for defining and arresting traitors. In the South Korean example see “Pan minjok haengwi ch’öbölöp” in Jung Heo *Panmin t’ügwü üi chojik kwa hwaldong* (Seoul: Sönnin), 142-3.

lead-up to the 1948 Proclamation Number 51 and the dismantlement of the People's Court a few months later.<sup>85</sup> Steinberg and a more recent historian of the treason trials, Augusto V. De Viana count 156 convictions, out of either 5,603 or 5,556 People's Court cases.<sup>86</sup> Steinberg ends his history of collaboration in the Philippines with the amnesty, and understandably so, given that he, like many historians of the occupation and aftermath have been interested in explaining the almost complete co-optation of Filipino elites into the wartime administration by the Japanese military. From the perspective of understanding the relationship between treason and atrocities, however, the amnesty finds us closer to the beginning of the story than its end.

The 1948 amnesty did not eliminate the issue of collaboration, it transformed and contained it. To understand this transformation we must look closer at Proclamation Number 51 itself (See Appendix A) and the debate that surrounded it. The proclamation states that while the People's Court had been trying cases for more than two years it had not reached a final judgment on any "reasonable collaboration with the enemy." Assuming that final judgment was taken to mean that the appeal of convictions had been ruled upon by the Supreme Court, this was simply untrue. Over two dozen treason convictions by the People's Court had received final rulings from the Supreme Court *before* the amnesty, and the original conviction was upheld in the majority of these cases.<sup>87</sup> The claim only makes sense if, instead of all People's Court cases, it was limited to treason charges against those emphasized in the opening clause who, "occupied positions in [the occupation] government, as well as against those who traded with the enemy."

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<sup>85</sup> Steinberg, *Philippine Collaboration in World War II*, 152-163.

<sup>86</sup> Ibid., 162. See also note 42, 207. He lists 229 "political prisoners" in custody by June 1948, excluding the Hukbalahap rebels. Augusto V. de Viana, *Kulaboretor!: the issue of political collaboration during World War II* (Manila: University of Santo Tomas Pub. House, 2003), 180. The source of de Viana's count is unclear.

<sup>87</sup> See Appendix B.

The amnesty for those accused of treason arising from “the last war” justified itself on three basic grounds:

1) The two witness rule and other restrictions made the prosecution of economic as well as political collaboration almost impossible

2) The “majority of the Filipino people now realize” that political collaborators acted under duress and as a shield against Japanese brutality

3) The collaboration issue divided the Filipino people at a time when unity was essential.

However, “public sentiment [did] not extend” to military collaborators and those guilty of atrocities in the service of the enemy. It thus made a clear exception:

That this amnesty shall not extend to persons who are now or may hereafter be accused of treason for having taken up arms against the allied nations or the members of the resistance forces, for having voluntarily acted as spies or informers of the enemy, or for having committed murder, arson, coercion, robbery, physical injuries, or any other crime against person or property, for the purpose of aiding and abetting the enemy in the war against the allied nations or in the suppression of the resistance movement in the Philippines.<sup>88</sup>

This amnesty was an exercise of executive power, rather than the product of legislation. However, its proclamation would spark two weeks of debate within the Senate and House of Representatives before each passed the resolutions of concurrence constitutionally required for the amnesty to take effect. These debates revealed significant disagreement with the president not only over whether such an amnesty was appropriate, but even more over its limited scope.<sup>89</sup> In the end, however, though many were absent for the vote, the resolutions passed on the evening of February 13 with overwhelming majorities of 50 to 8 in the House of Representatives and 14 to 2 in the Senate.

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<sup>88</sup> Proclamation no. 51 "A Proclamation Granting Amnesty" *Official Gazette*  
<http://www.gov.ph/1948/01/28/proclamation-no-51-2/>

<sup>89</sup> American Embassy, Manila to Secretary of State, Despatch No. 176 "Concurrence of the Philippine Congress with the President's Proclamation of Amnesty for Certain Wartime Collaborators" (February 18, 1948) RG 59 896.00/2-1848



Those who voted against the amnesty in the House included resistance veteran, future leader of the Huk suppression campaign, and eventual President Ramon Magsaysay. In the Senate, opposition included the same Lorenzo M. Tañada who had led the treason prosecution effort as Solicitor General until he turned to a political career in the Senate.

The debates over the amnesty revealed a complex array of positions on collaboration and the violence of military collaborators. Some opposed the amnesty on principle. Hermenegildo Atienza, representing Manila, was disgusted with the fact that collaborators were not only going free but felt no shame at what they had done. “I cannot be merciful...I cannot vote now for an amnesty under an atmosphere that glorifies collaboration,” he declared.<sup>90</sup> Jose Abad Santos was not the only wartime hero who was killed after refusing to serve the Japanese. Atienza spoke movingly of his time as a prisoner in Fort Santiago where his friend, the guerrilla leader Guillermo Nakar, was offered an alternative to execution: if he accepted a position as the governor of Isabela, the Luzon province where his guerrillas were once active, his life would be spared. He refused and was executed, and Atienza promised his friend that his memory would not be forgotten. “If I vote for amnesty I would have betrayed that trust: I would've been recreant to that word I pledged before a dying man.”<sup>91</sup> Future Philippine President Ramon Magsaysay did not give his own lengthy speech on the topic but he posed a long chain of questions to Manuel T. Cases, representing La Union who, though he preferred a universal amnesty, argued in favor of a partial one since, “Within a few days, or a few weeks, there will be another proclamation of the president extending amnesty to the smaller fries.”<sup>92</sup> For Magsaysay, the amnesty was a dangerous first step down a slippery slope that would eventually extend to traitors who were guilty of murder and rape, who should never be forgiven. “Fight amnesty,

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<sup>90</sup> Republic of Philippines *Congressional Record: House of Representatives* v. 3, no. 15 (Feb 13, 1948), 330.

<sup>91</sup> *Ibid.*, 334.

<sup>92</sup> *Ibid.*, v. 3 no. 14 (Feb 12, 1948), 306.

remember Basco,” he quoted from a letter he received from the mayor of San Antonio.<sup>93</sup> Basco, he explained, was a spy that had caused the death of thousands of people in the Luzon province of Zambales.

Juan G. Rodriguez, representing Pangasinan, was opposed to any amnesty not because it would free the guilty but because it denied political collaborators accused of the crime the opportunity to expunge the shame of the baseless accusation. “Why should I forgive these men who have not committed any crime?”<sup>94</sup> He voted no, because there is, “nothing to forget or forgive, they were innocent.”<sup>95</sup> Timoteo P. Ricohermoso, representing Marinduque, was against the amnesty for the same reason. The political collaborators were “heroes of our cause” who deserved their day in court to prove their patriotism.<sup>96</sup> One of these “heroes,” who had served in a number of positions during the war, including Justice Minister and as one of the Peace and Order Committee members that oversaw the pacification of guerrilla “bandits,” was among the representatives who participated in the debates: Quintin Paredes. A short U.S. collaborator profile compiled about Paredes during the war added an unusually angry comment, “Utterly selfish and probably cooperated with the Japanese because he believed they would win the war.”<sup>97</sup> In the final vote Paredes abstained because he was

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<sup>93</sup> Ibid., 312.

<sup>94</sup> Ibid., 362.

<sup>95</sup> Ibid., 416

<sup>96</sup> Ibid., v. 3 no. 12 (Feb 10, 1948), 226.

<sup>97</sup> In a collection of collaborator profile cards attached to State Department RG 59 896.00/2-747, comment dated July, 1944. The highly problematic evaluations of the motives of Philippine collaborators found in US documents was bitterly contested by their sympathizers, who noted that they were based upon greatly limited and biased wartime sources. In this case, for example, at odds with this harsh evaluation is the fact that, in 1938, Paredes chaired a Manila rally to protest the persecution of Jews after Kristallnacht. *Frank Ephraim, Escape to Manila: from Nazi tyranny to Japanese terror* (Champaign: University of Illinois Press, 2003), 39. There are also claims that in one of the first meetings between the leading political collaborators and the Japanese occupiers, Paredes actively protested Japanese atrocities and listed them to Lt. Gen. Maeda Toshinari. Agoncillo, *The Burden of Pproof: the Vargas-Laurel collaboration case* (Manila: University of the Philippines Press, 1984), 20.

himself involved in, “that drama which we might call a tragic comedy of ‘collaboration’,” but his speech to the House offered an eloquent defense of his wartime conduct.<sup>98</sup> There was nothing wrong with patriotic resistance leaders speaking up for him or his continued service in government, he suggested. Paredes quoted de Gaulle’s justification for including Jules Jeanneney, who was instrumental in the creation of the Vichy regime in 1940, in his 1944 cabinet, “I did not go to Vichy then but many who were there believed they were serving their country in their own way.”<sup>99</sup> In the Senate debates going on at the same time it was Camilo Osias, wartime education minister, who served as the voice for the political collaborators. His reelection in 1947 was widely quoted as proof the Philippine people knew he spoke the truth when he declared, “I yield to no man in patriotism, and when I served under the Japs I did so because I thought it was my duty to serve my people.”<sup>100</sup> Of course, Osias and Paredes avoided discussing whether those who hunted down guerrillas or pointed out guerrilla suspects to the Japanese might have shared the same desire to serve their country in their own way. However, Paredes did not distinguish between himself and Ricarte and Ramos, who were both, “really patriots.”

There were many more who spoke out in favor, not just of a partial amnesty for economic and political collaborators, but a complete and universal one for all crimes of treason during the war. Again their arguments stemmed from different basic principles. Damaso T. Samonte, representing Ilocos Norte, described the very idea of amnesty as, “putting a bandage on a gangrenous wound,” which could not “cleanse the nation’s wounds of a highly potent and virulent virus.”<sup>101</sup> Did heroes

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<sup>98</sup> One harsh critic of the political collaborators counts 20 out of 98 members of the early postwar House of Representatives who had served in the wartime national assembly. Abaya, *Betrayal in the Philippines*, 70.

<sup>99</sup> *Congressional Record: House of Representatives* v. 3 no. 15 (Feb 13, 1948), 377.

<sup>100</sup> Armando J. Malay “Osias Clashes with Pendatun On Amnesty” newspaper clipping attached to American Embassy, Manila to Secretary of State, Despatch No. 176 (February 18, 1948) RG 59 896.00/2-1848.

<sup>101</sup> *Congressional Record: House of Representatives*, v. 3 no. 12 (Feb 10, 1948), 211.

such as the brave Jose Abad Santos, he asked, die in vain? The Philippines was not alone in facing this problem after the war but its other allies did not exhibit the, “sickly sentimentality of Christian charity and a mistaken concept of unity,” shown by President Roxas. He went on,

Where are the Quislings now? Laval of France had long been carted away to the eternal sleep of infamy. Vidkun Quisling of Norway, Josef Tiso and Karl Hermann Frank of Czechoslovakia, Anton Mussert, the Fuehrer of the Netherlands, Leon Maria Joseph Ignace De Grelle of Belgium, and many more others have long been liquidated without much of a ceremony except that which is reasonably required by civilized justice.<sup>102</sup>

However, if amnesty was inevitable, Samonte argued, then it should be for everyone. “I do not see any justice in exculpating the brain that schemes and convicting the hand that executes. The finger man is just as guilty as the trigger man.” On the contrary, if anything it was the political collaborators who deserved more punishment. “His racket is wholesale. He encompasses the entire mass of citizenry within the broad sweep of his perfidy.”<sup>103</sup>

Lorenzo Sumulong, a representative from Rizal who later became known worldwide for sparking the Krushchev shoe-banging incident when he was the Philippine representative at the United Nations in 1960, was also disturbed to learn that, “the mercy to be extended will be given only to the brains and buy and sell tycoons of the occupation” and not the, “ignorant simpleminded credulous Filipino,” whose only crime was that he was, “ready to believe the utterances of the prominent men of his time.”<sup>104</sup> As was repeatedly pointed out in the debate, only a paltry 15% or so treason cases were covered by the amnesty. According to a count by Representative Toribio Perez,

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<sup>102</sup> *Congressional Record: House of Representatives*, 215. Laval and Quisling were shot in October, 1945. Karl Hermann Frank was publicly hanged and Mussert shot in May, 1946. The wartime Slovakian leader Jozef Tiso was hanged in April, 1947. However, Samonte was wrong about Leon Maria Joseph Ignace Degrelle, who escaped capture and fled to Spain.

<sup>103</sup> *Ibid.*, 212.

<sup>104</sup> *Ibid.*, v. 3 no. 13 (Feb 11, 1948), 243.

there were some 472 cases involving political collaboration, 355 economic, and 100 related to cultural collaboration that were eligible for amnesty. However, those ineligible were 2,677 cases involving espionage, enemy agents, spies and informers and another 2,925 cases involving military collaborators who were members of the Bureau of Constabulary, Makapili, police and related organizations.<sup>105</sup>

Sumulong was willing to accept the fact that the prominent men were “unwilling instruments” but were they not, “bigger and deadlier enemies than the ordinary soldier who takes up arms in the fields?”<sup>106</sup> When Mateo M. Nonato questioned how one could call for a full amnesty for those, “bastards that ought to be hanged” for serving as informers and spies who were directly responsible for death of many Filipinos, Sumulong reminded the assembly that Filipinos had killed each other and acted as informers during the Philippine-American war but the United States had been willing to forgive and forget in the aftermath. “Why should our government be more strict or rigorous with these countryman of ours who are misled perhaps during the occupation?”<sup>107</sup>

For Sumulong and several other representatives such as Tapacio Nueno the most troublesome aspect of the partial amnesty was that it was a clear case of social injustice. Esmeraldo Eco, representing Camarines Norte, was outraged for the same reason, “The most lamentable fact is that those men who held important positions during the occupation, the ranking officers of the Philippine Constabulary who issued orders to the buck privates...who were responsible, perhaps, for all the miseries and sufferings of our people are the only persons who will be benefited by this grant of amnesty.” He was not against a general amnesty or even a partial one but, “if amnesty is ever to be

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<sup>105</sup> Ibid., v. 3 no. 8 (Feb 4, 1948), 86. These numbers are not mutually exclusive. It is not clear how many individuals the cases covered, since most individuals were prosecuted on multiple counts of treason that could fall into more than one category.

<sup>106</sup> Ibid., v. 3 no. 13 (Feb 11, 1948), 242-243.

<sup>107</sup> Ibid., 249.

given, I repeat, it must begin not from the very top, but from the rock bottom.”<sup>108</sup> Alejo S. Santos, representing Bulacan, protested, how could Eco suggest that those with blood on their hands go free first? It was, said Eco, a matter of command responsibility. Santos disagreed, there could be no command responsibility for commanders who were themselves not free to act.

In the Senate, Lorenzo M. Tañada, speaking from his experiences prosecuting treason cases, also denounced the, “discriminatory, unjust and vague” partial amnesty that left the “poor and ignorant” to languish in prison. In addition, he already foresaw one of the weaknesses in the exception provided by the amnesty that we shall have occasion to consider below. Was it not strange, Tañada argued, that someone accused of treason with rape would go free while someone accused of treason with theft would not?<sup>109</sup> Surely, responded Senator Carlos S. Tan, common sense would prevail when faced with such circumstances.

These opponents of partial amnesty concentrated on the objective fact that it was overwhelmingly members of the lower classes who were accused of the crimes of torture, murder, other acts of violence carried out on behalf of the enemy, or of enabling such atrocities in their capacity as informants. It was implied that it was only their poverty, their ignorance, and their susceptibility to propaganda which led them to commit such acts. Just as many of those who favored amnesty for political collaborators took at face value their claims to have been motivated only by patriotic sacrifice, most of those who argued for a general amnesty studiously avoided confronting the possibility that the common man might act out of personal revenge, greed, or a love of power. If political collaborators were innocent because, it was suggested, they could not prevent the brutality of

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<sup>108</sup> Ibid., no. 14 (Feb 12, 1948), 286.

<sup>109</sup> "Tañada Blasts Amnesty Move: 'Unjust, Vague': Favors Top Men, Leaves Lowly to Suffer Penalties" newspaper clipping attached to American Embassy, Manila to Secretary of State, Despatch No. 176 (February 18, 1948) RG 59 896.00/2-1848.

the Japanese, the “smaller fries” were innocent because, in their ignorance, they could not be expected to refuse orders to carry it out.

Alejo S. Santos was not so sympathetic to military collaborators among the lower classes and he was in a better position to speak against them. Santos was a leading wartime guerrilla and formerly one of the few delegates elected to the House of Representatives from the leftist Democratic Alliance, which included the Communist Party and representatives of the Hukbalahap guerrillas who would be formally declared an illegal organization only two months later.<sup>110</sup> Santos argued that it might be true that a partial amnesty would mostly favor the elites, but it was equally true that the help of some of these collaborating elites was of great assistance to the guerrillas. It was also undeniable which traitors were hated the most by the wartime resistance,

The greatest fear...was not fear of the governors, nor the leaders, nor Vargas, nor Laurel, nor the mayors of the different towns. If we ever had fear in our hearts, it was because we fear that these Makapilis and spies might spot us and betray us to the Japanese army...One thing is sure, I want to make it of record here, that the president may issue to a Makapili his freedom, but the minute the guerrilla learns that Makapili has been set free, the guerrillas would get him and kill him. That is the true spirit that is common among many guerrillas who really share the feelings of the orphans and widows whose husbands and loved ones were killed by Makapilis.<sup>111</sup>

Santos did not buy the argument that the masses were docile creatures merely following the orders of the leading puppets, “Makapilis could never say that they became Makapilis in response to the speeches of Mr. Vargas or Dr. Laurel or anybody else.”<sup>112</sup> Yet even Santos, perhaps because he knew a different kind of justice awaited the military collaborators upon their release, preferred a

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<sup>110</sup> Santos would later join the Nacionalistas, serve as defense secretary and run against Marcos for President in 1981. The Huks were declared illegal by Roxas on March 6, 1948. "The President's Month in Review: March 1948" *Official Gazette* <http://www.gov.ph/1948/03/31/the-presidents-month-in-review-march-1948/>

<sup>111</sup> *Congressional Record: House of Representatives*, no. 14 (Feb 12, 1948), 293-4.

<sup>112</sup> *Ibid.*, 298.

general amnesty to a partial one so that the country could finally, “give this collaboration question to oblivion.”<sup>113</sup> Felixberto M. Serrano, representing Batangas, also avoided offering any explicit defense of those guilty of atrocities when he argued that the country should, “Put an end—the quicker and more general it is, the better—to this collaboration question.”<sup>114</sup> Though he would reluctantly accept a partial amnesty, he argued that any debate about the virtue of its passing should not concern its recipients. It was simply not necessary to provide any excuse for collaborators or determine their innocence or guilt. “The president and the people had only in mind the country's welfare when this amnesty was issued.”

Though many representatives made calls for a general amnesty instead of a partial one they acknowledged that they stood on weak constitutional grounds when they contemplated a refusal to concur with an executive proclamation and demand its modification. Some representatives, including Cosme P. Garcia, Marcial O. Rañola, and Simeon G. Toribio, didn't think it was worth the effort to make a rousing speech in favor of a more general amnesty and merely declared their preference for it when announcing their vote.

The votes to concur with the amnesty did bring to a close political debates on collaboration for half a decade, even though it affected a small minority of cases.<sup>115</sup> The People's Court itself was, despite its modest scope, an expensive burden on the state treasury and abolished by Republic Act 311. The 1946 budget set its cost at P650,000, and during the 1948 debates its annual cost was quoted at P1,126,570. Putting this into perspective, the operating budget for the Department of Justice as a whole in 1947 was only P1,700,000 and the entire estimated government revenues for the 1947-1948

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<sup>113</sup> Ibid., 303.

<sup>114</sup> Ibid., v. 3 no. 15 (Feb 13, 1948), 340. Serrano also, more generally, went on to attack the constitutionality of the People's Court system.

<sup>115</sup> The debate would emerge again when Quirino pardoned several hundred collaborators still in prison in 1953.



fiscal year was P130,000,000.<sup>116</sup> Those costs did not entirely disappear, however. The majority of treason cases were not covered by the amnesty and were thereafter returned to regular criminal courts. Though the budget provided was cut well out of proportion to the number of cases eliminated by the amnesty, Act 311 still provided P375,000 to pay the costs for remaining treason prosecutions and wages for fifteen Special Attorneys dedicated to those cases.

With the disappearance of the People's Court, an institution which represented the surgeon who operated upon the “gangrenous” wounds of the nation, together with the amnesty proclamation and resolutions of concurrence supported widely across party and factional lines, the collaboration issue immediately became less visible and depoliticized. Unlike Burma and India, in the Philippines, there was a two step process. First treason cases involving atrocities and military collaboration were segregated from prominent political cases. They were then merged together with regular criminal cases in criminal courts not designed to handle the complexities of a wartime occupation or the special considerations of evidence and so on that helped justify special treason tribunals. The crime itself remained treason. Inevitably, given the large number of cases that remained, this prolonged the process significantly even as it removed the issue from political consideration. In the next chapter we will examine some of the many cases that remained in the courts and how the laws of treason continued to serve as a poor weapon against the crimes of war.

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<sup>116</sup> The 1948 cost is quoted by Toribio Perez in *ibid.*, v. 3 no. 8 (Feb 4, 1948), 84. The 1946 budget for the People's Court is in Republic Act no. 1 "An Act Appropriating Funds For The Operation Of The Government Of The Commonwealth Of The Philippines Beginning July First, Nineteen Hundred And Forty-Six Until The General Appropriations Act For The Fiscal Year Nineteen Hundred And Forty-Seven Is Approved" [http://www.lawphil.net/statutes/repacts/ra1946/ra\\_1\\_1946.html](http://www.lawphil.net/statutes/repacts/ra1946/ra_1_1946.html). The 1947 revenue estimate is from "Message On the National Budget for the Fiscal Year 1947-1948" (Feb 11, 1947) *Official Gazette* <http://www.gov.ph/1947/02/11/budget-message-1947-1948/>

## Chapter 6: Trials and Aftermath, 1947-1953

The amnesty of 1948 pulled the issue of retribution against wartime collaborators out of the political arena, achieving something the British had failed to accomplish in either India or Burma. In India trials were attempted but at a huge cost, while in Burma, the process was aborted. In the Philippines the trials continued outside of the public eye in regular criminal courts but remained trials for treason. Through a subset of these trials, this chapter will identify the ways in which the crime of treason was a poor alternative for war crimes or even more common criminal laws against murder and other violence.

Many of the remaining accused Filipino traitors would be dismissed for lack of evidence, a lack of two witnesses for each act, and other technicalities. Some cases of military collaboration and wartime atrocities committed in the service of the enemy would remain in the courts for years after the 1948 amnesty. The People's Court Papers, which contain the case files from most of the treason trials after the war, are today housed in the University of the Philippines Main Library in Diliman and any close study of the People's Court from September, 1945 to June, 1948 will need to consult that collection. However, a portion of these cases were appealed to the Philippine Supreme Court, the rulings of which are readily accessible in numerous Supreme Court digests and legal databases.<sup>1</sup> Some 157 of these Philippine Supreme Court rulings on occupation period treason cases from 1947 to 1959 listed in Appendix B usually summarized the main charges, findings, and selections from the evidence.<sup>2</sup> De Viana and Steinberg emphasize that less than 1% of People's Court cases were tried and reached conviction during the time of its existence, but it is not known how many of the

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<sup>1</sup> I have depended mostly on the copies of these rulings in the searchable Philippine Laws and Jurisprudence Databank, created by the Arellano Law Foundation, which is a non-profit institution specializing in legal education. <http://lawphil.net/>

<sup>2</sup> Only a few unusual cases are from after the 1953 pardon.

remaining untried cases that were turned over to courts of first instance resulted in conviction. The 156 cases in their count up to 1948 is extremely close in number to the count of 157 Supreme Court rulings I have identified, but it is less than half of the 323 wartime collaborators who received a pardon in 1953. A closer examination of cases in the lower courts after 1948 would be necessary to compare post-amnesty conviction rates with the People's Courts. The prediction, in the amnesty debate, by Manuel T. Cases that a second more complete amnesty would follow the one in 1948 within a few weeks was not completely incorrect, if very premature. As we shall see, almost all of the treason convictions considered here were covered in a mass pardon issued by President Quirino in 1953 and only four of the cases come from the years following it took effect on July 4.

The majority of the post-amnesty treason cases in the Philippines worked their way through the courts from 1948 to 1953, through the increasingly violent Huk rebellion, through the corruption plagued elections and the conclusion of the Philippine war crimes trials in 1949, the suspension of *habeas corpus* under presidential emergency powers in 1950, through the sudden execution of over half a dozen Japanese war criminals in January 1951, the rural reconstruction movement of 1952, and the dramatic suppression of the Huks under the then Secretary of National Defense, Ramon Magsaysay. Well over half of treason cases ruled upon by the Philippine Supreme Court, some 92 in total, involved an accused member of the occupation period Bureau of Constabulary (BoC), an alleged member of the organization known as the Makapili, employees of the Japanese military police, a "United Nippon" member (*yōin*), a member of the Coastal Defense Corps (CDC, *kaigun jiyūtai*), or other unidentified uniformed military collaborator.

**Table 6.1: Supreme Court Rulings Involving Military Collaboration Cases 1947-1959**

Organization	No. Of Cases (% of 157 total treason cases)	Affirmed Convictions (% of 92 military collaboration cases)	<i>Reclusion perpetua</i> or Death (% of 83 convictions)
Bureau of Constabulary	13 (8.3%)	9 (69.2%)	7 (77.8%, inc. 1 death sent.)
Makapili	48 (30.6%)	44 (91.7%)	37 (84.1%, inc. 1 death sent.)
Yōin, CDC, military police, other uniformed	31 (19.7%)	30 (96.8%)	21 (70%)
<b>Total Mil. Collaborators</b>	<b>92 (58.6%)</b>	<b>83 (90.2%)</b>	<b>63 (75.9%)</b>

Notes: For full case list, see Appendix B. Cases listed in the table are those in which membership in relevant organizations was alleged, but not necessarily conceded by the court. Most cases contained 4-20 counts of treason, and unlike other organizations, membership in the Bureau of Constabulary was ruled not treasonous by itself (see below). Affirmed convictions means the Supreme Court affirmed the lower court conviction as guilty on at least one count of treason. Most of the remaining 65 cases examined were of informers, spies, agents, and those who participated in some capacity on Japanese military raids but in which such participation was explicitly alleged to have been enlisted in a military organization.

Almost a third of all of the Supreme Court rulings on treason under consideration, involved persons accused of—though judges were rarely satisfied with evidence of the charge—being members of the Makapili, an organization of no more than a few thousand which was primarily active in only one area of the Philippines, the main island of Luzon, and which only existed from November, 1944 through to the end of effective Japanese resistance in the summer of 1945. By contrast, there were only 13 cases of members of the Bureau of Constabulary, far less than half of those involving accused members of the Makapili, despite the fact this military and policing organization of national scope and a peak size of about 18,000 men was engaged in “pacification” campaigns against anti-Japanese guerrillas from around the middle of 1942.<sup>3</sup>

<sup>3</sup> On the size of the BC in August, 1944, see Ricardo T. Jose *Captive Arms: The Constabulary Under the Japanese, 1942-1944* (Manila: University of the Philippines, 1997), 12. Mass desertions from the BC began around that time as air attacks by the US began, *ibid.*, 18.

The trial records of the People's Court contain the most complete record of the many different forms of collaboration during the Japanese occupation, including information collected by the U.S. Counter Intelligence Corps. However, the range of atrocities committed by military collaborators and informers, as well as some of the defining features and problems of the Philippine approach to their punishment can be seen in the Supreme Court rulings on treason cases appealed from the People's Court or from the courts of first instance the cases were transferred to after 1948 (See Appendix B for a list of rulings considered). Because Article 47 of the Philippine Revised Penal Code required automatic review by the Supreme Court of all death sentences, a particularly high proportion of these cases were those in which lower courts had recommended execution.<sup>4</sup> With only two exceptions however, in the cases under consideration the Supreme Court reduced all death sentences of affirmed verdicts, usually to *reclusion perpetua*, an indeterminate sentence of 20 to 40 years of imprisonment together with a lifelong sentence of civil interdiction.<sup>5</sup>

For years after the defeat of Japan, the Supreme Court was an awkward institution to deliberate upon the issue of collaboration. Five of its 11 early postwar members had served in the occupation government in some capacity, and three of its members, Ramon Ozaeta, Ricardo Paras, and Manuel V. Moran had served on the Supreme Court in the wartime republic.<sup>6</sup> Jose Yulo first

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<sup>4</sup> A full copy of the 1930 Revised Penal Code, which for the most part is in force today, is in the Philippine Laws and Jurisprudence Databank LawPhil database. [http://www.lawphil.net/statutes/acts/act\\_3815\\_1930.html](http://www.lawphil.net/statutes/acts/act_3815_1930.html) (Accessed June 20, 2011). The automatic review process did not include death sentences imposed by military courts. The death penalty was effectively abolished in the new constitution in 1987 in Article III Section 19 which required Congressional action to permit it. A law reinstating it was passed in 1993, but it was again abolished in 2006.

<sup>5</sup> Article 34 of the Revised Penal Code, *ibid.*, denies those sentenced to civil interdiction, "rights of parental authority, or guardianship, either as to the person or property of any ward, of marital authority, of the right to manage his property and of the right to dispose of such property..." Article 27 gives the range for *reclusion perpetua*. One of the two exceptions, Roman Vilo, who had his death sentence affirmed by the Supreme Court was listed among those who received a pardon in 1953.

<sup>6</sup> The other members with service in the occupation period were Cesar Bengzon and Manuel Briones. See Hernando J Abaya, *Betrayal in the Philippines* (Quezon City: Malaya Books, 1970), 82. Bengzon would later go on to serve as Chief Justice in the 1960s. A prewar senator and member of the constitutional convention, Briones would run as Vice President on Jose P. Laurel's 1949 run for President.

filled the shoes of the executed Chief Justice Jose Abad Santos, but Moran soon followed him and continued to serve as Chief Justice into the postwar until his retirement in 1951.<sup>7</sup> While their service in the office undoubtedly contributed an air of legitimacy to the judiciary under the Japanese occupation and they had ample opportunity to continue their close relationships with other leading wartime political collaborators, it would be unfair to suggest that these men used their office to provide direct judicial backing for Japanese or Constabulary repression of the resistance. Instead, the wartime Supreme Court justices kept themselves busy with relatively trivial matters while the war raged around them. In the *Official Gazette* of the wartime Republic from October, 1943 to June, 1944 there are only 27 Supreme Court decisions listed. Of these, all but one of the cases were economic in nature, involving inheritance, land transactions, the repayment of loans, and the illegal use of trademarks. To give but one example, in February 1944, the Supreme Court ruled on whether or not the Secretary of Labour could compel the operator of a rice mill to repair an engine which vibrated so severely that it shook the foundations of the building. The only case which came close to the violence of war was a May 1944 decision affirming the conviction in a conspiracy to murder committed by a group of “socialists.”<sup>8</sup> While Japanese military and constabulary were busy torturing and executing any captured “socialist” Hukbalahap guerrillas, the Supreme Court under the Japanese ruled on this single case against four defendants who had been convicted of a crime that took place in July 1940, more than a year *before* the Japanese arrived.

In the postwar period the Supreme Court would retain a role as the final arbiter of state retribution in a host of violent crimes. However, the slow moving legal machine of the Philippines

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<sup>7</sup> Like almost all official biographies of leading collaborators in the Philippines, Moran’s entry on the Philippine Supreme Court e-Library’s “Memorabilia Room” makes no mention of his wartime position as Chief Justice, and instead merely lists his postwar appointment as such from July 1945.  
<http://elibrary.judiciary.gov.ph/index3.php?justicetype=Chief%20Justice&justiceid=a45475a11ec72b843d74959b60fd7bd6455b72cfb34aa> (Accessed June 3, 2011)

<sup>8</sup> *Official Gazette* v. 1 n. 8 (May 1944), 884-890.

that culminated in their rulings would continue to work side-by-side with other legal and extralegal forms of political retribution. At the same time the Supreme Court was handing down rulings on leading cases of military collaboration and atrocities committed by traitors, a new rebellion by the most powerful wartime guerrillas, the Hukbalahap, was brewing on the plains of Luzon. Summary justice in the field, which reigned on all sides during the Japanese occupation, or in special military courts, together created an expansive space for violence against and by insurgents that has continued, not only during the occupation and early postwar but, to a greater or lesser degree, down to the present day.

### *Complex Crimes*

In almost all of its rulings on wartime treason cases, the Supreme Court corrected judges of the People's Court or courts of first instance which combined allegations of treason with murder or other violent crimes. Lower courts frequently ruled that military collaborators, informers, and spies were guilty of treason on the one hand and separately of violent crimes on the other. When combined as "complex crimes" as defined by Article 48 of the Revised Penal Code of the Philippines, conviction guaranteed that the maximum penalty for the heavier crime would be given, which helps account for a large number of death sentences handed down. Thus, a military collaborator who joined a Japanese patrol and, say, beat or tortured an individual or robbed suspected guerrillas or, if convicted of the "complex crime," automatically given the maximum penalty for treason, a death sentence.

The Supreme Court rejected this argument in case after case, usually referring to the precedent established by *People vs. Prieto*, a ruling issued the very day after the amnesty for political

collaborators, on January 29, 1948.<sup>9</sup> In this case, Eduardo Prieto was accused of being an agent of the Japanese military police who participated in raids on suspected guerrillas, tortured suspects, himself bayoneted two guerrillas to death and also murdered a third. The lower court ruled that the accused was guilty of “the crime of treason complexed by murder and physical injuries” and sentenced him to death. Rejecting this compounding of the crime the Supreme Court described the crime of treason in this way:

The execution of some of the guerrilla suspects mentioned in these counts and the infliction of physical injuries on others are not offenses separate from treason...In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. (*Cramer vs. U.S.*, ante.) This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason it becomes identified with the latter crime and can not be the subject of a separate punishment, or used in combination with treason to increase the penalty...<sup>10</sup>

In other words, in the context of an enemy occupation, assuming that adherence to the enemy could be demonstrated, the murder of a guerrilla is not murder but treason. It is not a traitor who commits the killing but a murder that makes the traitor. Besides the fact that a complex crime would have guaranteed the harshest punishment, this ruling could be beneficial to the accused in other ways. Whereas a murder case required only a single credible witness to convict, murder which constituted treason required two. It also ensured that the, “factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amoeba reproduction.”<sup>11</sup> For example, it prevented a suspect of being convicted of treason for providing aid and comfort to the

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<sup>9</sup> All Supreme Court rulings below are from the above cited Philippine Laws and Jurisprudence Databank LawPhil database at <http://lawphil.net/>. Hereafter LawPhil. *People vs. Eduardo Prieto* LawPhil G.R. No. L-399 (January 29, 1948).

<sup>10</sup> Ibid.

<sup>11</sup> *People vs. Pablo Labra* G.R. No. L-886 (August 10, 1948) LawPhil.



enemy by accompanying soldiers on a raid and then being convicted of a separate count of murder should the expedition have resulted in the death of any guerrillas.

Seen from the perspective of victim's call for justice, however, not only did the ruling make it more difficult to secure convictions due to the two witness rule, but the political nature of the offense came to dominate the arguments of the court. In each case, it was just as important, from a legal standpoint, to establish that the accused, in violation of a "duty of allegiance," and "for the purpose and with the intent of giving aid and comfort to the enemy, did willfully, unlawfully, feloniously and traitorously" carry out each act, rather than to establish all the details of the violence itself since adherence to Japan was as crucial to conviction as the overt act itself. In the political crime of treason the primary victim is the nation, and only particular brutality shown in a killing, rather than a "less painful method of execution" could serve as an aggravating circumstance to increase the penalty.<sup>12</sup>

Treason was not the only political crime where "worm multiplication" was prevented. The related crime of rebellion, that is, "rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws," came to be handled by the Supreme Court in the same manner in what is today known in the Philippines as the "Hernandez Doctrine" after the case which established the precedent. When it is successfully argued, the Hernandez Doctrine protects radical dissidents from an endless compounding of more minor offenses when accused of rebellion. It had its most notable implementation in trying the captured leadership of the Huk rebellion. Together with other leading Huk rebels, Jose Lava, a former head of the Communist Party of the Philippines and political leader of the uprising from 1948-1950, was convicted with "the complex crime of rebellion with murders and arsons." Lava was sentenced to *reclusion perpetua* but many of his fellow accused Huks were sentenced to death thanks to the

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<sup>12</sup> *People vs. Eduardo Prieto* G.R. No. L-399 (January 29, 1948) LawPhil.

“complex” nature of their crime. When the case reached the Supreme Court in 1969, it ruled the murders were political acts that themselves constituted the crime of rebellion, in accordance with the earlier Hernandez precedent, and reduced all of their sentences to between 5 and 10 years.<sup>13</sup>

In the broader historical terms of an international conflict, however, the earlier rulings on *murder as treason* detached the act from both its common criminal context, and also distinguished it from the kind of acts commonly committed by armed parties on all sides in war up to that time. Instead, its separate category confirmed the widespread domestic sentiments in recently liberated countries around the world in the aftermath of World War II that, during an occupation, there were in fact three different kinds of murder: killing for personal motives, killing for the cause of freedom, and treasonous murder. This may seem to be an obvious and natural division but it is radically different from a contemporaneous approach to wartime violence based on the laws of war, either in the decades leading up to World War II, or within the scope of the new “crimes against humanity” prosecuted by the war crime courts of Nuremberg, Tokyo, and elsewhere. Within the relatively weak international legal environment created by the 1899 and 1907 Hague conventions and the 1929 Geneva Convention Relative to the Treatment of Prisoners of War, violence against those under the control of an occupier was classified according to the status of the victim: recognized belligerents treated as prisoners of war after capture, non-combatants, and unlawful combatants who were, in the absence of any explicit protections, generally subject to military justice, the speed and severity of which not only varied widely from conflict to conflict and army to army, but often showed a lack of consistency within them.

As in treason cases in other countries, however, no attempt was made by the Philippine courts to make a distinction between the war crime of killing innocent civilians and the execution of

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<sup>13</sup> *People vs. Jose Lava, et al.* G.R. No. L-4974-8 (May 16, 1969) LawPhil. On “Hernandez Doctrine” See *People vs. Amado V. Hernandez* G. R. No. L-6025 (May 30, 1964) LawPhil.

spies and guerrillas whose lives had never been effectively protected by international law.<sup>14</sup> In the 1907 Hague Convention as well as the third Geneva Convention of 1949 which explicitly banned, for the first time, reprisal killings against civilians, guerrillas could only claim protection as prisoners of war when they had, among other requirements, a “fixed distinctive emblem recognizable at a distance,” carried their arms openly, and conducted their operations, “in accordance with the laws and customs of war.”<sup>15</sup> Even after a further expansion of protections in 1977, these stipulations have continued to effectively shield states, including the United States, who abused or killed “unlawful combatants” down to the present day.<sup>16</sup> The Philippine Supreme Court revealed on at least one occasion that they had no sympathy for this kind of restrictive definition, when they affirmed the conviction a member of the secret service division of the Manila metropolitan police who suggested the laws of war protected his work crushing the underground movement in the city. Even if the issue of treason were set aside, the unlawful nature of Manila insurgents was not conceded, “while guerrilla warfare may be unlawful from the standpoint of the conqueror, it cannot be so regarded by those who, by natural right, are trying to drive him out of their invaded territory.”<sup>17</sup>

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<sup>14</sup> A catch-all principle, known as the “Martens Clause” found in the preamble of the 1899 and 1907 Hague conventions calls for “cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.” A source of much debate in international law, it has been used to argue that unlawful combatants receive protection but according to Kevin Jon Heller, it was not employed in the early postwar war crimes trials. It has, however, become increasingly recognized as part of customary international law in recent decades. Kevin Jon Heller *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (New York: Oxford University Press US, 2011), 209. Yutaka Arai *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Leiden: Brill, 2009), 68-71.

<sup>15</sup> Hague Convention Section 1, Chapter 1, Article 1, and Geneva Convention Article 4.

<sup>16</sup> Even in Protocol I extending the Geneva Conventions in 1977, which the US is one of the few countries not to ratify, dissident forces are only recognized as such when they do not conceal their allegiance and must be “recognizable as combatants while preparing for or during an attack.”

<sup>17</sup> *People vs. Pedro Santos Balingit* G.R. No. L-1298 LawPhil/

War crimes courts were often more forgiving. When a Japanese soldier executed a guerrilla in the Philippines, as long as he followed some minimal form of military justice, he could effectively argue he was not committing a war crime but following an established practice of war, an argument upheld in the Nuremberg trial of German officers such as General William List and others.<sup>18</sup> In this infamous “Hostages Trial,” best remembered for the convoluted precedent it established on the limited legality of reprisal killings, the execution of thousands of partisans by the accused in Greece and Yugoslavia were ruled, with somewhat less ambiguity, to not be a war crime. The judges conceded that, “We are obliged to hold that such guerrillas were *francs tireurs* who, upon capture, could be subjected to the death penalty.”<sup>19</sup> On the other hand, as in similar cases around the world, when, for example, a Makapili soldier executed a guerrilla under Japanese orders, he was guilty, by accident of birth, of the capital offense of treason.

#### *Bureau of Constabulary Officers On Trial*

The rehabilitation of the BoC began even before Japanese surrender. Many of the thousands of officers who deserted the Japanese in the fall of 1944 joined USAFFE (U.S. Army Forces Far East) affiliated guerrillas whenever possible. Unlike the Burma National Army, however, this reversal—or “coming out”—of loyalty happened at the level of individual officers or small-scale units rather than the organization as a whole. Before the People’s Courts were established the difficult task of

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<sup>18</sup> The *summary execution* of guerrillas that was so commonly carried out by Japanese soldiers, without any form of judicial proceeding, even if merely involved a quasi-judicial hearing by a single officer of significant rank, was consistently held to be a war crime. Some of the war crimes counts against General Yamashita, for example, were for having executed suspected guerrillas without any kind of judicial proceeding. *United States v. Tomoyuki Yamashita* in *Law Reports of Trials of War Criminals* v. 4, 34. Furthermore, in several Nuremberg cases, judges showed no tolerance for sweepingly broad definitions of partisans to include any obstructing civilians. *Heller Nuremberg Military Tribunals* 209-11.

<sup>19</sup> *Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10*, Nuremberg, October 1946-April, 1949: Case 12: *U.S. v. von Leeb* (cont.) Case 7: *U.S. v. List* (Hostage case) (U.S. G.P.O., 1949).

determining the “true loyalties” of BoC officers who had returned to the fold had already been confronted by special “loyalty boards” which screened each BoC officer beginning in the summer of 1945 and found but few wanting.<sup>20</sup> Many of those who passed, now armed with counterinsurgency experience gained under the Japanese, continued to serve in the Military Police Command, which was soon given, once again, the name Philippine Constabulary in 1948. The rehabilitation of the wartime organization seemed complete when its most prominent surviving head, Guillermo Francisco, was found not guilty on all counts of treason after the war. Despite a mountain of evidence brought against him and over half a dozen witnesses, the two witness rule for each individual treasonous act and the carefully vague designation of the constabulary’s targets as “bandits or lawless elements” helped him overcome all 22 counts even before the passing of the amnesty.<sup>21</sup>

Although they were not explicitly exempted in the 1948 amnesty, the Supreme Court further confirmed the rehabilitation of the BoC when it established a precedent in 1949 that membership in the organization was not by itself treason. Jose de Castro, a former soldier who had fought for the United States in the USAFFE before joining the BoC, was convicted of treason by the Fifth Division of the People's Court partly on the basis of his BoC membership.<sup>22</sup> However, Castro was acquitted of all charges by the Supreme Court which ruled that, “Membership in the Bureau of Constabulary under the government of occupation is not treason. That institution was intended for the promotion and preservation of law and order which were essential during war to the life of the civilian

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<sup>20</sup> Jose “Captive Arms” 19. Mariano Villarín describes his encounter with the loyalty boards and the evidence he produced of his efforts to protect those captured. Mariano Villarín, *We Remember Bataan and Corregidor: the Story of the American & Filipino defenders of Bataan and Corregidor and their Captivity* (Gateway Press, 1990), 277. Abaya offers the most critical description of the history of the loyalty boards. See Hernando J Abaya, *Betrayal in the Philippines* (Quezon City: Malaya Books, 1970), 152-4.

<sup>21</sup> Steinberg, *Philippine Collaboration* 157-8. Augusto V de Viana, *Kulaboretor!: the issue of political collaboration during World War II*. (Manila: University of Santo Tomas Pub. House, 2003),

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<sup>22</sup> See below for other elements of his case.

population.”<sup>23</sup> Thus, the decision by the Japanese to merge the BoC with the local police may have been a blow to what little prestige its officers might have felt when they joined the organization out of POW camps but it was now of help to them when they faced treason charges. The key was, of course, the identity of these “bandits and lawless elements” the Constabulary were so busy suppressing were. Hilario Felipe, a peasant reform leader and later Huk officer from Talavera in central Luzon, told the graduate student Benedict J. Kerkvliet in 1970 that the Hukbalahap resistance was widely respected not just for attacking the Japanese occupiers but in reducing crime in the rural areas because, “there wasn’t anyone else doing it during the occupation.” The Bureau of Constabulary were, “chasing guerrillas, not carabao thieves.”<sup>24</sup> Other American led guerrillas who waged a savage war with the Huks in the same area of Luzon, however, were far more sympathetic to the Constabulary, who supplied them with arms, agreed to restrict patrols in their areas of control, and were thoroughly infiltrated by guerrillas for intelligence collection.<sup>25</sup> The picture that emerges is thus much like the one which existed in large parts of Japanese occupied China, where Japanese allied Chinese military forces in rural areas could be found aggressively suppressing Communist guerrillas on the one hand, while entering into a truce or active cooperation with other guerrilla forces who often owed allegiance to the Nationalists.<sup>26</sup> In both places there existed a violent arena in which patriotism and national betrayal were less useful than class and institutional loyalties in predicting alignments. According to Kerkvliet’s informants in Luzon, before the Japanese occupation the Constabulary was, “practically

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<sup>23</sup> *People vs. Jose de Castro* G.R. No. L-547 (June 28, 1949) LawPhil.

<sup>24</sup> Kerkvliet *Huk Rebellion*, 70. Carabao are a kind of domesticated water buffalo.

<sup>25</sup> Robert Lapham and Bernard Norling, *Lapham’s raiders: Guerrillas in the Philippines, 1942-1945* (University Press of Kentucky, 1996), 82, 136-7. Ray C. Hunt and Bernard Norling, *Behind Japanese Lines: An American Guerrilla in the Philippines* (University Press of Kentucky, 2000), 107.

<sup>26</sup> The relationship between Chetniks, other partisans and German invaders in Yugoslavia is another obvious comparison, but USAFFE contacts and cooperation with the Bureau of Constabulary in their struggle against Huks never reached the fully compromised position of Chetniks in their relationship with the Axis powers.

an army for the landed elites.” It is hardly surprising to find it continuing to clash violently with the strongest guerrilla movement in the area, whose rural component had deep roots in the peasant reform movement.<sup>27</sup>

Although the Supreme Court overturned People’s Court convictions on the basis of BoC membership, the court was nevertheless willing to evaluate charges of treasonous acts by BoC officers on a case-by-case basis. As Chief Justice Moran put it in affirming the conviction of Bernabe Galo, who had joined Japanese and other Bureau of Constabulary officers in the arrest and torture of several guerrillas in 1943 and 1944 in western Luzon, the “Appellant's membership in the police force of Manaoag does not in itself constitute treason; but his having accompanied the Japanese soldiers to the places of abode of guerrilla leaders and the several illtreatments which he personally inflicted upon them because of their refusal to disclose their connection with the guerrilla forces, constitute treason.”<sup>28</sup> From the perspective of Huks who were targeted by BoC raids throughout the occupation and continued to fight them when this ruling was handed down in 1949, the act of “accompanying Japanese soldiers to the places of abode of guerrillas,” was hardly more than a basic job description for the Constabulary. In none of the BoC cases, or other Supreme Court treason rulings on Luzon cases, are the guerrillas targeted for arrest, torture, and execution ever identified as connected to the Huks. However, because the organizational affiliations of guerrillas mentioned in these cases were rarely clarified, this fact is not sufficient evidence the courts ignored raids by military collaborators on the Hukbalahap. In Galo’s case, the tortured guerrillas may have been attached to Ray Hunt’s units, which were active in the Manaoag area, and which were in turn under command of a leading

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<sup>27</sup> Kerkvliet, *Huk Rebellion*, 54-57.

<sup>28</sup> G.R. No. L-1305 LawPhil.

American guerrilla, Major Robert Lapham.<sup>29</sup> In this case, not only had the accused thus pitted his Constabulary against guerrilla forces that were known for having established amicable relations with units of the BoC, but the guerrilla leader he arrested, Tomas Velasquez, was the pre-war police chief of Manaoag.<sup>30</sup>

The conviction of Gaudencio Roble also shows that the Luzon based Huks were not the only target for some Constabulary units. The Supreme Court affirmed Roble's conviction in 1949 for three counts of having led BoC units in the arrest of guerrillas in Cebu, at least one of which was a former USAFFE soldier, tortured those who were captured, and executed those who survived interrogation.<sup>31</sup> In several cases, however, the Supreme Court overturned rulings of the lower court when it failed to persuade them that the BoC were truly acting on behalf of the Japanese cause. Policarpio Dumapit, a BoC officer in Zambales, was convicted of having arrested, tortured and imprisoned eight guerrillas in 1943 and issuing an order to capture all Americans roaming in the forest, dead or alive. However, the Supreme Court dismissed the conviction in 1949. The majority ruling justified the acquittal by arguing that only three of the eight victims testified for the prosecution and two of these admitted they were being investigated for arson. The fact they served their sentence in a provincial jail rather than a military garrison, argued the court, suggested they were not suspected guerrillas but common criminals. In the case of the order to capture or kill all Americans, the Supreme Court believed the

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<sup>29</sup> See excerpts of daily reports from the 201st Counter Intelligence Corps in this biography of Sgt Paul R. Malbuisson, a CIC officer who was in Manaoag in 1944: <http://201cic.com/roster/malbuisson/index.html> Accessed June 20, 2011.

<sup>30</sup> 201st Counter Intelligence Corps Daily Action Report in Manaoag from January 24, 1945 compiled by Sgt Paul R. Malbuisson. Original in the possession of Roger Malbuisson.

<sup>31</sup> Roble's death sentence was reduced to *reclusion perpetua*. *People vs. Gaudencio Roble* G.R. No. L-433 LawPhil (March 2, 1949) LawPhil. The Supreme Court also affirmed the treason conviction of Rufino Suralta in 1950, another BoC officer who had been a USAFFE soldier until their surrender in Bataan. He was found guilty of arresting escaped forced laborers who, when turned over to the Japanese were blindfolded and bayoneted. In three other counts he arrested suspected guerrillas, beat them and administered water torture, and killed two of them. His death sentence was reduced to *reclusion perpetua* due to his "past services with the USAFFE and the fact that he was made a mere tool of the Japanese. *People vs. Rufino Suralta* G.R. No. L-1546 (6 March, 1950) LawPhil.



accused when he claimed to have told the tribal leader to ignore the written order when he delivered it. They were further persuaded that the accused only entered the Constabulary with the knowledge and acquiescence of local guerrillas, who referred to him as “Ave Maria.”<sup>32</sup> In a dissenting opinion Justice Tuason protested that the Supreme Court was in no position to question the credibility of various witnesses at such a distance and was convinced of the officer’s guilt. In justifying his dissent, however, he brought in evidence from other counts of treason which lower courts had already dismissed due to the two witness rule. Quoting various witnesses who reported on the role of the accused in the capture of two Americans who were later killed, and sending of letters urging guerrillas to surrender, Tuason concluded, “if he burned candles for both sides, his true longing was for the devil. He feigned connection and sympathy with the guerrillas as a means of protection to himself if and when the day of judgment arrived.”

The appeal of Benjamin Nadurata shows again how complex the cases which the Supreme Court ruled upon could get as it evaluated the contradictory testimony emerging from the lower courts.<sup>33</sup> Nadurata was chief of police in Caloocan, Rizal before the war but was sent for further training to the Constabulary Academy set up by the Japanese in 1942. He was convicted of treason for the arrest, torture, and death of three suspected guerrillas in southern Luzon. Several witnesses testified to various components of the charges including the torture after the arrest, the leaving of one suspect tied to a post under the heat of the sun, and how three arrested guerrillas were taken to the top of a mountain for execution. After the first was killed, a second was shot while trying run away and the third, who survived a shot through the neck and face, was thrown into a pit and left to die. Miraculously, this third victim survived and testified at the treason trial as to his arrest, the

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<sup>32</sup> *People vs. Policarpio Dumapit* G.R. No. L-743 (11 Oct., 1949) LawPhil.

<sup>33</sup> *People vs. Benjamin Nadurata* G.R. No. L-2311 (21 May, 1951) LawPhil.

interrogation which questioned him about his connection to two guerrilla leaders, and the attempt to kill him on the mountain. The Supreme Court, however, was more inclined to believe the testimony of the accused who claimed that, as Albay provincial commander of the BoC, Nadurata was acting on orders of the provincial governor to prevent rice from leaving the province even as he secretly provided supplies to legitimate guerrillas. After a warehouse of rice had been raided he set out with 50 of his Constabulary men to arrest those responsible and the three victims were found to be members of a gang, under one Anatolio Llenerizas, who were suspected of having launched the attack. The governor of the province testified that Llenerizas was not a respected guerrilla leader in the province but led feared bandits who “robbed and killed people on the highways.” The three victims were shot, claimed Nadurata and one of his subordinates, while “trying to escape” when they were guiding the BoC to the headquarters of Llenerizas. The court acquitted the defendant, and did not address at all the question of the torture of the victims.

The Supreme Court was itself ruling on the veracity of testimony from a distance, and it is often impossible for a historian to evaluate the merits of complex cases. It was indeed common to find bandits claiming to be guerrillas and guerrillas behaving as common bandits, not only throughout the Philippines, but under military occupations everywhere. However, it is interesting to note that, in this case, the judges rejected the testimony of no less than five witnesses for the prosecution, including a victim who had been shot through the face and neck—questioning their honesty and pointing out contradictions—while accepting, without any challenge, testimony of the defense from the accused, his subordinate BoC officer and the Japanese appointed provincial governor. In case after case of Makapili or other informers, the Supreme Court would roundly dismiss the testimony of any witnesses who were in a similarly compromised position as a collaborator or had some other close connection to the accused. For example, in the Makapili trial of

Primitivo Osi, the court dismissed the testimony of Osi and two witnesses (one of them a relative of the accused), not because of any specific problem of their testimony, but due to the weight of prosecuting witnesses. Additionally, they noted, “it is well established in the law of evidence that affirmative testimony is stronger than negative.”<sup>34</sup>

The same generosity of interpretation can be found in the court’s ruling in the appeal of Vicente Tumandao, which the People’s Court had sentenced to *reclusion perpetua* after being found guilty on five out of eighteen counts of treason. One of the counts, based solely on his membership in the Bureau of Constabulary could be easily dismissed based on the above-mentioned precedent. All the other counts, however, were for leading patrols to arrest suspected guerrillas or former USAFFE soldiers and in one case, when failing to find the target, for taking a whole family as hostage to a Japanese garrison. The accused himself testified that he was ordered to join fifteen Japanese soldiers, five other constabulary officers, two interpreters and an informer on a raid that resulted in eight arrests. As we have seen, judges ruled elsewhere that this act alone would have been sufficient grounds for a treason conviction. In this case, however, they were “impressed with the frankness of the appellant” in admitting that he joined the raids. Justice Paras revealed the depth of sympathy the court had for these Constabulary men who entered their new profession straight out of a starving prisoner of war camp such as Camp O’Donnell in Capas:

It is hard to believe that the appellant, who had rendered splendid service in Bataan and fresh from the risks and hardships that were his in Capas would readily much less voluntarily, have allowed himself to become a willing tool of his former was enemies. Upon the other hand, we are inclined to think that he had no choice in the matter. Indeed, we know as a matter of public notoriety that the Filipino soldiers released in Capas endeavored to enter in the government service in any capacity in to the Japanese army or being suspected as hostile to the military occupants...As there is also no showing that the appellant had previous knowledge of the guerrilla connection of those

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<sup>34</sup> *People vs. Primitivo Osi* G.R. No. L-2688 (27 Feb., 1950) LawPhil.

whose relatives were arrested and detained, it is not safe to assume that the raids charged in the information were made at his initiative or instigation. We rather think that appellant's role in the incidents complained of served to frustrate the barbarous ways of the Japanese if the latter were allowed to run the whole show.<sup>35</sup>

Again Justice Tuason wrote a dissenting opinion in which he listed the various examples of how beatings personally administered by the defendant in the course of interrogations were hardly examples of him attempting to “frustrate the barbarous ways of the Japanese.” On the contrary, he was shocked that someone who had himself undergone the horrors of Japanese custody could partake in these acts. As Tuason saw it, each POW released and sent into Constabulary service had three choices: evade service, join but restrict conduct to preserving law and order, or treasonously assist in suppressing the resistance. However, he did not concede the extreme difficulty in distinguishing between the latter two choices when Constabulary units found themselves on joint patrols or raids with the Japanese.

### *Accused Makapili on Trial*

In Constabulary treason cases determining adherence to the enemy was the biggest challenge for any prosecutor. As in the case of political collaborators, psychological factors were important. This was not the case for the Makapili. Although a high percentage of cases involving Yōin, Coastal Defense Corps, and various auxiliaries also resulted in affirmed convictions, membership in the Makapili was alone sufficient grounds for a treason conviction.<sup>36</sup> The precedent usually cited for this was the 1947 case *People v. Manayao*. Unlike other accused members of the organization who claimed to be the most dedicated of super patriots fighting against imperialism, Pedro Manayao claimed in this case that, as a Makapili, he had joined the Japanese Imperial Army, sworn allegiance

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<sup>35</sup> *People vs. Vicente Tumandao* G.R. No. L-1653 (28 Jan., 1949) LawPhil.

<sup>36</sup> See Appendix B for a list of these cases.

to Japan, and was therefore no longer a Filipino citizen. The court dismissed this argument in the simplest of terms, “We are of the considered opinion that the *Makapili*, although organized to render military aid to the Japanese Army in the Philippines during the late war, was not a part of said army. It was an organization of Filipino traitors, pure and simple.”<sup>37</sup>

These were the extremely violent days of late 1944 and early 1945, after Japanese reinforcements flooded in, guerrilla attacks ramped up, and American forces returned to the archipelago. Manayao’s institutional affiliation or even his citizenship seems hardly the issue worth quibbling over given the nature of the violence that followed. The timing is key. Constabulary forces predominantly joined Japanese patrols and raids from mid-1942 to mid-1944 and while there were regional upsurges in violence where Japanese military carried out large scale mopping up campaigns, such as in Leyte around October, 1943, the Constabulary was on the other side of the violence of the early 1942 invasion and had mostly abandoned its posts when the violence peaked again in late 1944. The Makapili certainly “adhered to the enemy,” but even if some of its members genuinely desired—as surely many Constabulary officers who joined Japanese raids did—to minimize civilian deaths, they came into being at a moment when the cycle of violence in Luzon, where they were most active, had reached its most horrible stage of mass reprisals. In some cases, however, such as that of Pedro Manayao, witnesses testified that the cruelty of these military collaborators far outstripped that of the Japanese soldiers they accompanied. In late January, 1945, as American troops were about to begin retaking Manila, guerrillas launched an attack on occupation forces in Angat, in the province of Bulacan. In reprisal for the attack, Japanese soldiers, together with Manayao and other Makapilis, took revenge upon the nearby barrio of Banaban. The men, women, and children of the village were gathered together and, with the exception of the children, all sixty or seventy of them were

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<sup>37</sup> *People vs. Pedro Manayao et al.* G.R. No. L-322 (28 July, 1947) LawPhil.

slaughtered. Two young survivors who were spared testified that the Japanese soldiers stopped the Makapili Manayao, who was a local known by his nickname ‘Pedro, the Painter,’ from killing the children as well, at which he allegedly protested that, “the children would be wives of guerrillas later when they grew up.”<sup>38</sup>

The conviction of Florentino Canibas by the Supreme Court in 1950 was for an even more horrible massacre. On February 11, 1945 a group of Makapilis together with Japanese soldiers raided the barrio Marajuy in Lipa, Batangas province. Several hundred people, almost the entire population including men, women and children were marched to a citrus experimental station, tied in groups of two and bayoneted.<sup>39</sup> Five girls were spared to be kept as “servants” of the attackers, one of which testified as one of the three main witnesses for the prosecution.<sup>40</sup> In a separate case which reached the Supreme Court in 1952, Macario Bautro was convicted for participating in the same massacre, raising the sentence of the lower court of 12 years and 1 day, on the basis of his “lack of education,” to *reclusion perpetua* given the seriousness of the crime.<sup>41</sup> Not all reprisal raids that involved alleged Makapili members ended in massacre, but this was hardly comforting to inhabitants of a community in the midst of an attack. The Supreme Court affirmed a conviction against Juan Lansanas for having joined a patrol of Japanese soldiers on a reprisal raid which resulted in the arrest and detention of all males in the targeted village in Laguna province for three days in December, 1944. The raid followed the discovery of the corpse of a Makapili member and the refusal of the village to point out who had killed him.

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<sup>38</sup> It should be noted that two of the three main witnesses for the case were 10 year old girls. In a separate opinion Justice Perfecto cautioned against believing everything in the testimony of two who were so young.

<sup>39</sup> The number of dead were listed as 300 in the Canibas case, but 200 in the Bautro case.

<sup>40</sup> *People vs. Florentino Canibas* G.R. No. L-2193 (1 Feb., 1950) LawPhil.

<sup>41</sup> *People vs. Macario Bautro* G.R. No. L-4260 (21 Jan., 1952) LawPhil.

In both the cases of Canibas and Lansanas, lower courts had also convicted them of a separate count of membership in the Makapili. Although both were seen wearing a “Japanese uniform” and a “white armband” in the company of the Japanese—something which could have described a range of auxiliaries voluntary or coerced—the Supreme Court dismissed this charge in both cases for lack of two witnesses to any overt act confirming official membership. Instead, it used this evidence in the charge to confirm the adherence to the enemy required to convert other acts of violence into treason. The court came to the same conclusion in other cases, such as those of Filemon Escleto, Ismael Aquivido, and Domingo Capacete, whose conviction by lower courts also included separate treason counts alleging membership.<sup>42</sup> In other cases, such as that of Alejandro Almazora and Valentin Trinidad Bagalawis, the court inferred membership from circumstances confirmed by at least two witnesses, such as the existence of a local Makapili branch, and the accused being seen at its headquarters frequently associating with its well-known members.<sup>43</sup> Nevertheless, the court had come to recognize that the term Makapili was used quite broadly. Testimony in the Lansanas case revealed what it had come to mean from the perspective of villagers, “The witness heard from people that the Makapilis were the persons who were always in company of the Japanese pointing out guerrillas.”<sup>44</sup> In only a relatively small minority of cases was membership in the organization as clear as it was in, for example, that of Jose Javier Almodovar, who admitted in a statement given to a U.S. Counter Intelligence officer that he joined the Makapili in November, 1944 after hearing Benigno

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<sup>42</sup> *People vs. Filemon Escleto* G.R. No. L-1006 (28 June, 1949) LawPhil, *People vs. Ismael Aquivido* G.R. No. L-1789 (29 July, 1949), and *People vs. Domingo Capacete* G.R. No. L-943 (22 Nov., 1947) LawPhil.

<sup>43</sup> *People vs. Alejandro Almazora* G.R. No. L-2954 (16 Nov., 1950) LawPhil, *People vs. Valentin Trinidad Bagalawis* G.R. No. L-262 (29 March, 1947) LawPhil.

<sup>44</sup> *People vs. Juan Lansanas* G.R. No. L-1622 (2 Dec., 1948) LawPhil.

Ramos, Artemio Ricarte and Pio Duran deliver recruitment speeches in Santa Rosa, Laguna province.<sup>45</sup>

In most of the cases, the accused Makapili appear as armed individuals accompanying Japanese patrols or raids. The previously mentioned case of Primitivo Osi, however, offers both a look at the often long relationship of an alleged Makapili officer with the Japanese, and the development of the organization into one with a more recognizably military character.<sup>46</sup> Osi was, like many other accused Makapili, formerly a member of Sakdalista party from 1930-1935, serving as a party secretary in Candelaria, in what is now Quezon province, and also worked in the Manila Electric Company as a lighting inspector. In October, 1944 he accepted a job as a foreman and interpreter for the Japanese manager of a Japanese company identified as “Mataichi Kabushi Kaisha” but known by its prewar incarnation as the government founded Nacoco (National Coconut Corporation).<sup>47</sup> A number of witnesses testified that he drilled and commanded “*Makapili* soldiers of the *Nacoco* Military Police” numbering between 300 and 400 Filipinos, which were headquartered at in the Nacoco garrison. In his own testimony denying all the accusations of atrocities, Osi said he had “drilled the laborers” of the company and that they all eventually retreated with the Japanese. Prosecution witnesses accused Osi of leading Makapili, sometimes in the company of Japanese but other times making no mention of them, in the confiscation of food supplies, the arrest of numerous suspected guerrillas who never returned to their homes, the mass burning of homes, and of participating in the massacre of 50 bound captives in a foxhole near the garrison. While the term Makapili is used throughout the details of the ruling, the question of official membership and the actual existence of any formal Makapili unit was not considered in the Supreme Court ruling. If the

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<sup>45</sup> *People vs. Jose Javier Almodovar* G.R. No. L-1080 (27 June, 1949) LawPhil.

<sup>46</sup> *People vs. Primitivo Osi* G.R. No. L-2688 (27 Feb., 1950) LawPhil.

<sup>47</sup> The Japanese name is most likely to have been Matsuichi kabushiki kaisha.



accused was at least telling the truth when he claimed to have drilled laborers of the company, instead of the image of a band of 300 to 400 rabidly pro-Japanese Makapili recruits bent on destruction, this may be an example of one of the many small-scale and less formal local efforts by the Japanese to train and arm Filipinos who were already employed by an institution run by the occupiers. Of course, this would not alter the facts of extreme violence and atrocities carried out by those involved, but serve as another reminder that the patterns of this violence are closely tied to the contexts of particular times and places, rather than neatly assigned to particular institutions and their ideology.

*Magic Eyes and Finger Pointers on Trial*

In most cases involving informers, an “agent of the military police” or someone fulfilling some other vaguely described position, was described as assisting Japanese soldiers to identify one or a few specific suspected guerrillas, usually known to the informer. Typical is the case of Apolonio Carlos who, in the summer of 1944, was seen getting out of a truck with some Japanese soldiers in a neighborhood of Manila and pointing out two houses.<sup>48</sup> Three individuals were taken from these homes by the soldiers to Fort Santiago where they were tortured during interrogation and released about a week later. The motives of Carlos were not considered by the Supreme Court and the appeal made no claim that the accused was acting under duress, so the court affirmed the sentence of *reclusion perpetua*. These cases usually depict a common counterinsurgency scenario: soldiers and their informants hunting down a series of known or suspected guerrillas, whose names may have been obtained through the interrogation and torture of already captured individuals. The informers might be a recently tortured prisoner, an intimidated local community member, a hostile neighbor willing to help the Japanese settle a score, or more regular informants who knew the local area well.

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<sup>48</sup> *People vs. Apolonio Carlos* G.R. No. L-239 (30 June, 1947) LawPhil.

While these raids on individual homes could be terrifying and involve extreme violence both at the scene of capture and once the targets had been taken back to the garrison, the zoning of an entire district or village, especially when combined with anonymous masked informers, produced a uniquely communal experience of horror.

The hooded “Magic eye” have since become closely associated with the Makapili, but the two are rarely equated in the case files. The Makapili appear as armed, sometimes uniformed, and occasionally on horseback directly engaged in attacks and arrests. The “magic eye” informers do, however, make a terrifying appearance in a number of treason cases, occasionally side by side with those identified as Makapili and, like the majority of treason cases that reached the Supreme Court, usually from the same violent period in the last months of the war. A typical case is found in the prosecution of Faustino Flores, Leon Gutierrez, and Felipe Reyes:

Early in the morning of December 1, 1944, a mixed force of Japanese soldiers and Filipinos, the latter armed with rifles and revolvers and each wearing a white band across his chest, rounded up the male residents of the different sitios of the barrio of Tipas, herded them together at the town plaza and then made them pass single file in front of a house located at one corner of the plaza. At the window of this house were several hooded persons known in those days as “magic eyes” who, as the men passed before them, indicted by a nod the ones suspected of being guerrillas. These were then led to the Aglipayan church where they were subjected to tortures to make them admit their guerilla affiliation and [squeal] on the other guerilla suspects. Some of them were even hanged from trees and the rafters of nearby houses. At about 5 o'clock in the afternoon of that day, the suspects were loaded in trucks and taken to Fort Santiago in Manila, many of them never to return.<sup>49</sup>

Other accused Makapili, however, directly joined in the process of zoning and identifying guerrillas, although in a less anonymous fashion. Ismael Aquivido, wearing a “Japanese cap with visor” stood at the entrance of a church in San Pablo City where all males 15 to 50 years of age had

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<sup>49</sup> Joint ruling on *People vs. Faustino Flores* G.R. No. L-1731, *People vs. Leon Gutierrez*, G.R. No. L-1676, *People vs. Felipe Reyes* G.R. No. L-1624 (31 Jan., 1950) LawPhil.

been gathered. As the men passed out of the church, he tapped “at least seventy” of the men on the back, who, “were taken over by the Japanese soldiers and later massacred.”<sup>50</sup>

“Finger pointers,” as they were also called, could also be women. In January 1950 the Supreme Court affirmed the treason conviction of Arsenia Nuñez, who was accused of being a “finger pointer” during two zonings in July, 1944.<sup>51</sup> After her husband allegedly abandoned her she moved from her home barrio to Cavite City, “where, in consonance with he[r] loose morals, particularly during the Japanese occupation, she became the mistress of Magno Garcia, a Japanese mestizo and a notorious spy in the service of the Japanese Kempei-tai in Cavite.”<sup>52</sup> She returned, at an age “over 15 and under 18 years” to participate in the zoning of her barrio with several truckloads of Japanese soldiers. There, “wearing a Japanese cap and clothing similar to that worn by Japanese soldiers” she pointed out two men who she said were, “bad men and guerrillas.” The two were taken away and never seen again. Witnesses for the prosecution also testified she participated in another zoning of another nearby district where she pointed out another five men.

The accused offered a much more complicated story in her defense. In her version of the events Nuñez was kidnapped by a group of armed bandits known as “Texas” that included a rejected suitor Ceferino Portuguez, who then raped her. She was then left in a house which was subsequently raided by Japanese soldiers, who refused to believe that she had been kidnapped and raped. She was taken by the soldiers to the city and placed in the custody of Magno Garcia, who she admitted living with until the liberation of the Philippines. She did confess to having participated in the zoning of her own barrio but claimed the men she pointed out in the zoning included her rapist, Portuguez. The court was not persuaded. Testimony of the father of Nuñez showing “utter indifference” about his

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<sup>50</sup> *People vs. Ismael Aquivido* G.R. No. L-1789 (29 July, 1949) LawPhil.

<sup>51</sup> *People vs. Arenia Nuñez* G.R. No. L-2321 (31 Jan., 1950) LawPhil.

<sup>52</sup> It is unclear where the evidence of this version of the background story came from.

daughter's alleged kidnapping was "so unnatural, so contrary to the well-known strength and closeness of the family ties of the Filipinos, that we hardly believe the accuracy of this story" and the court was inclined to believe the four women who testified for the prosecution since it was, "unbelievable that they would have concocted such accusations against this appellant, one of their own sex, if the facts related by them on the witness stand were mere fabrications." Justice Torres concluded the majority opinion, "even assuming that her contention that she was criminally assaulted and kidnapped by the 'Texas' bandits is true, yet, we fail to understand how such acts could justify her treasonable acts and adherence to the enemies of her country and fellow citizens." Due to her young age, the Supreme Court reduced the sentence for Nuñez from *reclusion perpetua* to 10 years, but she was freed with many of the other convicted traitors in 1953.

Nuñez was not the only woman to have come before the People's Court, but was one of the rare women who were convicted. Ma. Florina Yamsuan Orilos has identified at least 130 women in the papers of the People's Court and examined some 65 of these cases detail, almost all of which resulted in dismissal of the charges.<sup>53</sup> The largest number of these cases, 25, involved women who were, like Nuñez, charged with being informers or spies.<sup>54</sup> Others were accused of being members of the Makapili, propaganda agents, or of economic collaboration. Some of them were accused of nothing more than serving as cooks or doing laundry, but all of these cases were dismissed.

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<sup>53</sup> Florina Yamsuan Orilos "Preliminary Profile of Women 'Collaborators' in the People's Court Records." *Philippine Social Sciences Review* 57(1) (20 Sep., 2010): 181–220.

<sup>54</sup> *Ibid.*, 192.



**Figure 1: CIC Interrogation of Filipina, 1944**

The image of one suspected female collaborator is preserved in a history of Counter Intelligence Corps operations in the Southwest Pacific. The suspect, who is described as the “common law wife” of a Japanese military police sergeant, is portrayed reclining in a relaxed cross-legged pose while the CIC officer sits nearby, diligently recording answers to questions about her alleged involvement in the execution of an American officer.<sup>55</sup> While there are bars on the window, and the crime is deadly serious, the scene captured or more likely staged for the photographer strangely contrasts the casual disposition of the accused with the professionalism of a CIC officer working what appear to be cramped conditions. Whether the suspect was accused of helping expose or capture the executed officer, or was perhaps merely present at his execution, her name does not appear on the list of those pardoned in 1953 or among the appeals cases that reached the Supreme Court.

While the photographed CIC suspect was accused of having a connection to a violent outcome, seven women were accused in People’s Court proceedings of having providing aid and comfort to the enemy by serving as mistresses or concubines of the Japanese and one woman Amparo Karagdag,

<sup>55</sup> U.S. Army. Far East Command, Operations of the Counter Intelligence Corps in the S.W.P.A, 2 vols. (Tokyo, 1948), 64-65

mistress of the head of military police in the Philippines, Nagahama Akira, was accused of being an informer, spy and a mistress. The People's Court dismissed the case in 1946, "it was more of a question of disloyalty to her husband than disloyalty to her country."<sup>56</sup> Orilos points out one of the most remarkable treason cases, of one Emeter a Mascarenas, for allegedly consenting to be a comfort woman for Japanese soldiers at Boac on the island of Marinduque.<sup>57</sup> The case was dropped due, not to the problematic nature of the accusation, but because of the two witness rule and a lack of evidence. If women could be indicted and brought to trial, if not convicted, for their relations with the occupier, what then of Filipino men who were guilty of sexual crimes carried out in the course of the occupation?

#### *A Crime Political in Nature*

As we have seen, a collaborator's violent acts including beatings, torture, and the massacre of civilians were considered not to be separate crimes or "complex crimes" but to themselves be manifestations of treason which provided aid to the enemy. In cases of rape or the abduction of women into sexual slavery, however, majority rulings of the Philippine Supreme Court held that neither acts constituted aid and comfort to the enemy. Instead, they were, at most, relegated to aggravating circumstances.

Sexual violence was a prominent feature of Japanese military conquest throughout East and Southeast Asia, though in some cases, such as the opening stages of the occupation of the Dutch East

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<sup>56</sup> Orilos "Preliminary Profile," 207. Nagahama was the commander-in-chief of the Japanese military police in the Philippines from September 29, 1942 until February, 1945. 1. Maria Felisa A. Syjuco, *The Kempei Tai in the Philippines, 1941-1945* (New Day Publishers, 1988), 97.

<sup>57</sup> Orilos "Preliminary Profile" 208.

Indies, the Japanese command demonstrated its ability to limit its attacks on women.<sup>58</sup> By contrast, the occurrence of rape by Japanese soldiers in the Philippines from the earliest stages of the occupation was enough to earn the alarm of section chiefs of the Japanese Ministry of War in February, 1942, though the 14 rapes they saw as a “considerable” number came nowhere near the prevalence of rape noted in accounts of the occupation.<sup>59</sup> While a constant part of the campaign of violence and fear in the counterinsurgency campaign against guerrillas throughout the archipelago, the widespread rapes during the battle for Manila in February, 1945 were among many of the war crime counts at the military tribunal of General Yamashita Tomoyuki held in the city later in the fall of the same year, which resulted in his conviction and execution.<sup>60</sup> Attempts to reduce the spread of venereal disease and arbitrary acts of sexual violence led to the formation of military brothels. According to one 1943 count, over a thousand women employed by deception and various degrees of coercion, including many Filipinas directly abducted by Japanese troops, served in these official 'comfort stations' while many more were taken and held as sex slaves by small isolated army units.<sup>61</sup>

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<sup>58</sup> While Dutch women were targeted for sexual violence, Toshiyuki Tanaka didn't find evidence of rapes of Indonesians in the opening stage, where he characterized the Japanese treatment of them as “relatively benign.” Toshiyuki Tanaka, *Japan's Comfort Women: Sexual Slavery and Prostitution during World War II and the US Occupation* (London: Routledge, 2002), 63.

<sup>59</sup> Yoshiaki Yoshimi and Suzanne O'Brien, *Comfort Women: Sexual Slavery in the Japanese Military during World War II* (Columbia University Press, 2000), 78. For a collection of short oral accounts by women and the rape they confronted in the Philippines during the occupation see Angelito L. Santos and Renato Constantino eds. *Under Japanese Rule: Memories and Reflections* (Quezon City: Foundation for Nationalist Studies, Inc. and BYSCH, Tokyo, 1992), 221-227. The texts of a number of reports of rape in the Philippines that have been preserved, along with reports expressing alarm at the negative effect these rapes had on Filipino sentiment towards the Japanese can be found in *Shiryōshū Nihongun ni miru Sei kanri to Sei bōryoku: Firipin 1941-45* (Tokyo: Nashinokisha, 2008), 59-73. One of the earliest reports of large scale rape can be found in the January 1 entry in the diary of Pacita Pestaño-Jacinto. Pacita Pestaño-Jacinto, *Living with the Enemy: a Diary of the Japanese Occupation* (Manila: Anvil Pub., 1999), 14.

<sup>60</sup> At the trial some 500 rapes were estimated in the Manila area. Richard L Lael, *The Yamashita Precedent: War Crimes and Command Responsibility* (Wilmington, Del: Scholarly Resources, 1982), note 1, 140 cited in Bruce D Landrum, “The Yamashita War Crimes Trial: Command Responsibility Then and Now” *Military Law Review* 149 (1995), 285.

<sup>61</sup> Tanaka, *Japan's Comfort Women*, 47.

None of the Japanese soldiers or civilians were tried for the operation of the comfort women system, but the indictments of Japanese soldiers and civilians for war crimes trials carried out by Philippine courts did include 45 counts of rape, the third largest category of war crime behind abuse of civilians (92 counts), and the killing of civilians (134).<sup>62</sup>

So how did the Supreme Court deal with cases of these atrocities when Filipino collaborators were the perpetrators or indirectly complicit? Let us consider two cases. In March 1949, the court gave a ruling on an appeal in the treason case of one Cucufate Adlawan.<sup>63</sup> Adlawan had been sentenced to death by a lower court for the “complex crime of treason with murder, robbery, and rape,” in an indictment that included 23 counts. As a member the Bureau of Constabulary from March of 1943 to May, 1945 and later in the service of the Japanese military police, he was accused in count after count with participating in mop-up operations against guerrillas with Japanese forces, arresting suspected resistance members, engaging in beatings and torture that sometimes resulted in the death of the victims, as well as the direct bayonetting of civilians. Adlawan was also accused of stripping the wife of a suspected guerrilla and raping several young girls during a raid in the company of Japanese military police in August, 1944 in Cordoba, Cebu. Staying consistent with other rulings in which the Supreme Court argued that lower courts should not have convicted suspect of “complex crimes,” it was ruled that Adlawan should be convicted of treason alone without commenting explicitly on whether rape constituted one of the *acts* of treason that were thereby merged into the crime. However, there is reason to believe that it did not consider rape as one of the individual treasonous acts. Citing the precedent of *People vs. Racaza*, the unanimous ruling argued that the

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<sup>62</sup> Hitoshi Nagai 永井均, *フィリピンと対日戦犯裁判1945-1953* [The War Crimes Trials and Japan-Philippines Relations, 1945-1953] (Tōkyō: Iwanami Shoten, 2010), 220. The fourth, fifth and sixth largest number of counts were for the burning or destruction of property (23), looting (18) and cannibalism (15).

<sup>63</sup> *People vs. Cucufate Adlawan* G.R. No. L-456 (March 1, 1949) LawPhil. The court confirmed the conviction but reduced the death penalty to life in prison.



stripping of the wife and the rape of the Filipino girls could be considered, “two aggravating circumstances of unnecessary cruelty and ignominy.”<sup>64</sup>

In another 1949 ruling on 14 counts of treason in the case of a Filipino agent of the Japanese military police, Antonio Racaza, rape was again seen only as an aggravating circumstance and not an overt act of treason.<sup>65</sup> His other violent acts, in which he “wilfully, unlawfully, feloniously and treasonably,” summarily shot, beheaded, and strangled suspected guerrillas, tortured detainees during interrogation, and guided Japanese soldiers on raids, constituted the very acts of his betrayal of the nation. However, his attempt to rape a woman who refused to offer information during a raid were explicitly reduced to aggravating circumstances which were seen as, “deliberately augmenting unnecessary wrongs,” without themselves constituting overt acts of treason. In a separate opinion on the same case, Associate Justice Gregorio Perfecto (served 1945-1949) concurred with the conviction but argued that the attempted rape should not even be considered an aggravating circumstance:

The attempted rape on the person of Silvina Cabellon may be considered as ground for the prosecution of a different offense, but cannot be considered as aggravating treason, a crime political in nature. In the attempted rape there was nothing political and it had nothing to do with defendant's adherence and aid to the enemy.<sup>66</sup>

Though he would not repeat this argument when he joined the majority in the Adlawan case in March, in this earlier case Justice Perfecto was here trying to make a distinction between common crimes and the uniquely political crime that was treason. Sexual violence in war against a suspected

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<sup>64</sup> The key line in the precedent case argued that, “Rapes, wanton robbery for personal gain and other forms of cruelties are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately augmenting unnecessary wrong to the main criminal objective under paragraphs 17 and 21 of article 14 of the Revised Penal Code.” Quoted in *People vs. Adlawan*.

<sup>65</sup> *People vs. Antonio Racaza* G.R. No. L-365 (January 21, 1949) LawPhil.

<sup>66</sup> *Ibid.*

guerrilla was not, he argued, like beatings, torture, or the killing of civilians, a *political* crime that provided aid and comfort to the enemy and therefore should play no part in a treason conviction.

If the court held that rapes did not themselves constitute acts of treasonous violence then neither would the abduction of women into sexual slavery. Again, let us look at two cases. We have already met Jose de Castro, whose membership in the Bureau of Constabulary did not, according to the Supreme Court, itself constitute treason. Castro's original *reclusion perpetua* sentence was not only based on his BoC status, however, but on the fact he joined with Japanese soldiers on a nighttime raid on suspected guerrillas in January, 1945 in the El Pardo suburb of Cebu. Two women who lived in the targeted house were suspected of having a connection to guerrillas and, after being strung up by their arms for interrogation, they were both imprisoned for several weeks. After her release, one of the girls was again taken from her house by Castro to the home of the Japanese sergeant, one Yoshida, who led the raid, where he, "made some amorous advances" and, "threatened to kill her and all the members of her family should she not consent to live with him."<sup>67</sup> She was directed to return the following day which she did and subsequently became the sergeant's "mistress." The court ruled that Castro had done "nothing serious" in bringing the girl from her house to that of the sergeant. "It may be an aid to satisfy the lust of a Japanese officer," but this brand of aid to the enemy was ruled not to be treasonous thanks to the precedent established by the case *People vs.*

*Perez*.<sup>68</sup> Castro's life sentence was overturned and he was acquitted on all counts.<sup>69</sup>

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<sup>67</sup> *People vs. Castro*. The Sergeant Yoshida mentioned in this case may be the Sergeant "T. Yushida" mentioned in the above *People vs. Adlawan* and Sergeant "Yusidati" in the above *People vs. Racaza*. In the latter case, "Yusidati" is described as a member of the military police, not the army. All three cases are from the Cebu area. Yoshida's name was not among the names of Japanese convicted of war crimes in the Philippines by Sharon Williams Chamberlain "Justice and Reconciliation: Postwar Philippine Trials of Japanese War Criminals in History and Memory" (PhD diss., George Washington University, 2010), 235-247.

<sup>68</sup> *People vs. Castro*.

<sup>69</sup> In addition to ignoring his culpability in sexual crimes here, the act of accompanying Japanese on patrol and helping in the arrest of guerrilla suspects was a sufficient condition for a treason conviction in other trials, though

The Philippine Supreme Court ruling in the case against Susano Perez offers an unusually detailed justification for the position that Philippine collaborator complicity in securing sexual slaves for the occupation forces did not constitute acts of treason.<sup>70</sup> It also offered, a remarkable dissenting opinion which revealed the glaring inconsistency in the court's argument. Susano “Kid” Perez was convicted of treason by the same People's Court that had convicted Castro and was sentenced to death. In all six counts of treason Perez was accused of “commandeering” women to serve as sexual slaves for Japanese officers and sometimes raping the women himself. In some cases deception was employed, as when Perez asked for women to testify against some accused suspect, or when he attempted to convince a reluctant woman who had already escaped once that a Japanese colonel merely wanted her to be his secretary. According to testimony in the trial, the same colonel would go on to rape or enslave more than half a dozen women provided him by Perez. In one of the counts, Perez took a woman he had delivered to the Japanese colonel directly from a rape encounter to an uninhabited house where he then raped the traumatized woman himself. On other occasions, Perez abducted women from their homes and delivered them to banquets and dances where those who were “selected” were subsequently raped by Japanese officers in attendance. Even nurses working in the Cebu provincial hospital were targeted for these “invitations” at gun point.

Perez appealed the treason conviction and its death sentence without denying any of the findings in the accounts. In his opposing brief the Solicitor General argued that the actions of Perez constituted treason because his acts helped the Japanese to “maintain and preserve the morale of the

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apparently not for BC officers. “Where the participation of the accused merely in accompanying Japanese patrols and helping in the arrest of guerrilla suspects, we generally impose the minimum penalty which is *reclusion temporal*.” *People vs. Jose Ortega* G.R. No. L-5194 (November 20, 1952) LawPhil.

<sup>70</sup> *People vs. Susano Perez* G.R. L-856 (April 18, 1949) LawPhil. This case also mentioned as setting the precedent that securing women was not treason in Steinberg *Philippine Collaboration*, 155.

soldiers.” The majority of Supreme Court judges disagreed. The reasoning is worth quoting at some length:

The law of treason does not prescribe all kinds of social, business and political intercourse between the belligerent occupants of the invaded country and its inhabitants...What aid and comfort constitute[s] treason must depend upon their nature, degree and purpose...As [a] general rule, to be treasonous the extent of the aid and comfort given to the enemies must be to render assistance to them as enemies and not merely as individuals and in addition, be directly in furtherance of the enemies' hostile designs...His “commandeering” of women to satisfy the lust of Japanese officers or men or to enliven the entertainment held in their honor was not treason even though the women and the entertainment helped to make life more pleasant for the enemies and boost their spirit; he was not guilty any more than the women themselves would have been if they voluntarily and willingly had surrendered their bodies or organized the entertainment. Sexual and social relations with the Japanese did not directly and materially tend to improve their war efforts or to weaken the power of the United State[s]. The acts herein charged were not, by fair implication, calculated to strengthen the Japanese Empire or its army or to cripple the defense and resistance of the other side. Whatever favorable effect the defendant's collaboration with the Japanese might have in their prosecution of the war was trivial, imperceptible, and unintentional. Intent of disloyalty is a vital ingredient in the crime of treason...<sup>71</sup>

The argument employed by the court could also, of course, protect those women who had been accused of treason for their relationships with the Japanese, whether they were intimate or not; whether they were willing or involved varying degrees of coercion. However, Perez, who freely admitted accusations that he had violently coerced women, deceived them, and knowingly participated in the procurement of sexual slaves for Japanese officers, would not receive any punishment for those acts, which were dismissed as “trivial, imperceptible and unintentional” in their effect. The judges never fully confronted the fact that Perez was not simply procuring reluctant dance partners for the Japanese but knowingly facilitating their rape by the officers that they were either directly submitted to or who were in attendance at the banquets at which, as testified to in court after

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<sup>71</sup> Ibid.

count, women were raped. The death sentence and treason convictions were overturned, to be replaced only with a conviction on four counts of rape and a 10-17 year sentence for those encounters in which Perez directly attacked the women himself.

Associate Justice Guillermo Pablo (served 1945-1955), who had served as a judge in Cebu before the war, and was one of the few Supreme Court judges at the time who had not served in it during the occupation, offered a lone dissenting opinion in the case.<sup>72</sup> He quoted from the Solicitor General's brief a rather uncomfortable comparison between the the role of the United Services Organization (U.S.O.) in providing entertainment for the U.S. army in the Philippines and the "entertainment" provided for the Japanese Imperial forces. It appeared incomprehensible to him how the provision of women for the enemy could not be seen as an example of aid and comfort in wartime, and therefore treasonous. Pablo, however, did not dance around the issue of the rape of the women who testified and speak only in more vague terms of "entertainment." Instead, the violation of Philippine women was seen by Pablo as very much a "crime political in nature." However by conceding its political nature Pablo shifted the focus from the women who were the victims of the violence in order to argue that the crimes of rape and sexual slavery were an affront to the nation itself. He asked rhetorically whether there could be any greater treason than such acts. "They took over all of our resource production: everything in their path, but, by God, save the honor of our women."<sup>73</sup>

The fact that these sexual crimes of war were treated differently in the treason trials than the other crimes is a reminder that, not only that in the Philippines, but legal systems around the world

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<sup>72</sup> Overview of Pablo's career on the Philippine Supreme Court E-Library "Memorabilia Room" <http://elibrary.judiciary.gov.ph/index3.php?justicetype=Associate+Justice&justiceid=a45475a11ec72b843d74959b60fd7bd6456366f81e84c> accessed June 15, 2011.

<sup>73</sup> *People vs. Susano Perez (alias Kid Perez)* G.R. L-856 (April 18, 1949) LawPhil.

had yet to grapple fully with the relationship between these acts and the environment of war. In the early postwar trials, the comfort system of sexual enslavement that involved thousands of women throughout Japanese occupied areas only received the dedicated attention of a court in the 1948 Batavia Military Tribunal trying Japanese for the rape and forced prostitution of one particular group of Dutch women.<sup>74</sup> Forced prostitution was a prosecutable crime along with rape and did find mention in trials records elsewhere, if buried in testimony that covered a wide range of atrocities such as descriptions of the abduction of women into sexual slavery for German officers in Smolensk and in the nearby village of Bassmanova.<sup>75</sup> Mention of the high incidence of rape also appeared in the testimony of the war crimes trials in Tokyo and elsewhere, especially in relation to the atrocities in Nanjing after its capture in December, 1937.<sup>76</sup> However, overall after World War II sexual assaults were given far less direct attention in terms of actual prosecutions. This is even reflected in compiling of the records of the Nuremberg trials, as Kelly Dawn Askin has noted: the 42 volumes of transcripts for the trials have no entry in the index for “rape,” “prostitution,” or even “women” while having over three pages for “looting.”<sup>77</sup>

The Philippine Supreme Court was, as in all treason cases, not evaluating the issue in terms of the international laws of war but in a domestic legal context in which the choice was between the common crime of rape and the capital crime of treason. Rejecting the “political” nature of the crimes did not remove the possibility of punishment but it was a telling exception given its other rulings. As

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<sup>74</sup> Kelly Dawn Askin *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Hague: Martinus Nijhoff Publishers, 1997), 85. Yuma Totani, *The Tokyo War Crimes Trial: the Pursuit of Justice in the Wake of World War II* (Cambridge: Harvard University Asia Center, 2009), 14.

<sup>75</sup> Askin *War Crimes Against Women*, 66, 72. Theodor Meron, “Rape as a Crime Under International Humanitarian Law.” *The American Journal of International Law* (December 27, 1993), 426.

<sup>76</sup> Askin *War Crimes Against Women* 62-69.

<sup>77</sup> *Ibid.*, 98. The Control Council Law No. 10, which amended the crimes in the Nuremberg Charter for crimes by the four occupying powers in Germany did add rape. See Meron “Rape as a Crime”

the dissenting opinion of Justice Pablo suggests, it is not at all clear that “nationalizing” the crime of rape by including it as a form of treason, and thus bringing it into line with other forms of violence thus branded by the courts, could have brought Philippine society any closer to confronting the issues of rape and sexual enslavement as weapons of war and expressions of occupation power, or, more importantly, addressed the needs of survivors of the violence themselves. It would not be until the wars of Yugoslavia in the 1990s that the full range of these issues would begin to receive considerable attention in the academic, legal, and social realms.<sup>78</sup>

### *The 1953 Pardons*

The treason trials in the Philippines were carried out alongside the war crimes trials for Japanese occupation forces in the Philippines. From 1945 to 1947 American military courts tried war criminals who were charged with conventional crimes of war (category B) and of the new crimes against humanity (category C), including the famous trials of generals Yamashita Tomoyuki and Homma Masaharu. Numbering almost a hundred trials and continuing after Philippine independence in 1946, they resulted in a 90% conviction rate and 69 executions.<sup>79</sup> Although President Osmeña had created a National War Crimes Office in August, 1945 in order to collect evidence about atrocities in the Philippines, an agreement on transfer of the responsibility to the

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<sup>78</sup> At any rate, a full recognition of sexual crimes as war crimes and addressing them as such in either international or civil conflicts is not enough, however. As Carol Cohn puts it, “If rape’s use as a weapon of war is your concern, for example, you can safely contest the meanings of “war crime” or “crimes against humanity,” and hope that through redefining rape as a war crime, rather than a ‘natural,’ ‘inevitable,’ ‘boys-will-be-boys’ inherent aspect of war, there will be some deterrent effect. But if it is off-limits to address the intersections of gender and ethnicity, and the gender regime that makes a physical, sexual attack on a woman a blow against the ‘honour’ of a man and his community, how likely is it that rape will stop being used as a weapon?” Carol Cohn “Mainstreaming Gender in UN Security Policy: A Path to Political Transformation?” *Boston Consortium on Gender, Security and Human Rights Working Paper* No. 204, 13.

<sup>79</sup> There were 97 trials and 92 sentenced to death, but only 69 executed. Sharon Williams Chamberlain “Justice and Reconciliation Postwar Philippine Trials of Japanese War Criminals” 53. Some 140 out of about 150 Japanese war criminal suspects were convicted. Nagai フィリピンと対日戦犯裁判, 200. See Chamberlain’s Appendix 1 for a list of cases and outcomes, Chamberlain “Justice and Reconciliation,” 235-247.

Philippine courts was not reached until the spring of 1947.<sup>80</sup> The People's Court was already a significant burden on the Philippine national budget and President Roxas successfully pleaded for American legal and logistical assistance to continue carrying on the trials in its own courts.<sup>81</sup> These Philippine run war crimes trials began in August, 1947 and continued until December, 1949, convicting 138 Japanese soldiers and civilians out of 155 total arraigned in the trials, and sentencing some 79 of them to death.<sup>82</sup> Three executions were carried out in 1948 and over two years later, in January, 1951, another 14 were suddenly put to death. In the months that followed, sympathy for the plight of those imprisoned grew rapidly among the Japanese public, and Japanese, American, and even Chinese diplomatic representatives placed direct and indirect pressure on the Philippine government to put an end to the executions and consider a return of the remaining prisoners to Japan.<sup>83</sup> Domestically, leading occupation period officials such as former Makapili vice-Supremo Pio Duran and Senator Camilo Osias who had both themselves benefited from an amnesty, were active in supporting moves to release the Japanese war criminals.<sup>84</sup> Massive petition drives within Japan eventually totaling millions of signatures showed the breadth of mobilization efforts behind the issue, but there were concerns within the Philippines that Japanese war reparations to the Philippines would become tied to fate of the war criminals.<sup>85</sup>

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<sup>80</sup> Chamberlain "Justice and Reconciliation," 55.

<sup>81</sup> Ibid., 55-61.

<sup>82</sup> Ibid., 70.

<sup>83</sup> Ibid., 151-180.

<sup>84</sup> Ibid., 177. Duran was well known for his support for the Japanese war effort and was one of the leading officials of the Makapili. Goodman, GK. "Pio Duran and Philippine Japanophilism." *Historian* 32(2) (1970): 228-242.

<sup>85</sup> Chamberlain "Justice and Reconciliation" 151-2. A telegram from the Manila embassy to the state department referred to the mention of "a petition bearing some five million Japanese signatures delivered Malacanan from Tokyo" having been mentioned in the press as a possible explanation for pardons of the Japanese to be included in the "annual amnesty proclamation" announced on June 27. Cable No. 3904 Manila to Secretary of State (June 30, 1953), 796.00/6-3053 RG 59.



On June 27, 1953 President Quirino announced that many Japanese war criminals would be among those included in the annual presidential pardons.<sup>86</sup> All except those Japanese given a death sentence were to be pardoned. Japanese war criminals who were awaiting execution were given life sentences instead, but these were to be served in Japan rather than the Philippines.<sup>87</sup> Quirino chose to give a series of pardons instead of offering an amnesty, thus avoiding the need for a congressional concurrence resolution that, as we saw, had resulted in such heated debates and divisions over the 1948 amnesty for political collaborators. The pardons took effect July 4 and the decree would eventually lead to the return to Japan of 106 war criminals, most of them by boat later that month. However, while the pardons of the Japanese had the most significant international impact, they did not compose the largest number of individuals on the list of these 1953 pardons. Hundreds of Filipinos convicted of treason would also go free.

On July 4, 1953, 323 names of convicted traitors who were to be released that day were published.<sup>88</sup> Among these 323 can be found 122 names that match those in the 157 Supreme Court rulings on treason cases listed in Appendix B. The 35 names in Supreme Court rulings not found on the pardon list include 20 individuals whose cases were overturned by the Supreme Court that we would not, in any case, expect to be in prison, one death sentence that may have carried out, and five persons whose sentences were shorter than *reclusion perpetua* that may have paroled early. This leaves only nine other individuals not on the pardon list for unknown reasons. They may have died in prison, been released early, or not have qualified for the amnesty, but they do not represent, for

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<sup>86</sup> The news was reported internationally as a side note. For example, “President Quirino also announced that 350 Filipinos convicted as wartime collaborators would be pardoned.” in “Philippines to Free Japanese Captives” *New York Times* (June 28, 1953), 2. Though the pardons did not take effect until July 4, they were issued on the 27th of June, the day the president departed the Philippines to receive medical treatment in the United States.

<sup>87</sup> Chamberlain “Justice and Reconciliation,” 180.

<sup>88</sup> The clipping from the July 4, 1953 issue of the *Manila Times* was an attachment to “List of Names of Filipino Prisoners Pardoned by President QUIRINO on July 4, 1953” (July 21, 1953) 796.00/7-1053 RG 59.

example, cases tied to the worst massacres. Among those that did make it onto the pardon list was one of the two whose death sentence was confirmed by the Supreme Court, Roman Vilo, and also Susano Perez, whose treason conviction was overturned but replaced with several counts of rape. The total number of 323 pardons includes some 201 names not found in the 157 Supreme Court rulings which exceed the number of People's Court convictions reached by the time of the 1948 amnesty. If these others were also convicted of treason, or crimes that replaced them such as in the case of Susano Perez, it is a strong indication that the courts of first instance proceeded with convictions in the years that followed on an even larger scale than that of the People's Court.<sup>89</sup>

The day the collaborators were released the American communist and a leading Huk fighter who had been captured in the year before, William Pomeroy, watched them make their way to freedom from the National Penitentiary in Muntinglupa prison.<sup>90</sup>

As prisoners, the collaborators have been tolerated, their identities blurred in the orange mass of the prison population, but on the day the released group marches to the control gate, carrying their rolled-up possessions, the memory of their wartime behavior surges back. From the upper windows of buildings, water and missiles are poured down upon the collaborators. Prisoners strain at the bars, screaming, "Taksil! Taksil!" (Traitor! Traitor!). There is more respect for the thief and murderer here than for the traitor.<sup>91</sup>

The timing and reasoning behind the mass pardon remain to be explained. Did it serve to balance out the pardon of so many Japanese war criminals? Was it a calculated move by an embattled President Quirino in an election year to gain votes? Though he won the primary to become the

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<sup>89</sup> A despatch from the embassy back to the United States describes those pardoned as those "convicted of treason or other offenses involving collaboration with the enemy during the Japanese occupation by the defunct people's court and courts of first instance." "List of Names of Filipino Prisoners Pardoned by President QUIRINO on July 4, 1953" (July 21, 1953) 796.00/7-1053 RG 59. Nagai Hitoshi refers only to pardons from the people's court as receiving pardon but given the fact that there were more pardons than People's Court convictions, this seems to be merely an omission. Nagai, *Firipin to Tainichi Senpan Saiban*, 288.

<sup>90</sup> Pomeroy was a Communist Party USA education secretary in New York before World War II and wrote about his experiences fighting with the Huks in William J. Pomeroy, *The Forest, a Personal Record of the Huk Guerrilla Struggle in the Philippines* (New York: International Publishers, 1963).

<sup>91</sup> William J. Pomeroy, *Bilanggo: life as a political prisoner in the Philippines, 1952-1962* (UP Press, 2009), 80.

Liberal party's presidential candidate only a month before the pardons, mid-1953 found a sick and bed-ridden Quirino in desperate straights as his political strength also drained under claims of corruption, authoritarian abuses and the increasingly obvious fact that the Americans would firmly back his opponents. In May, Claro Recto, his most eloquent if not his most powerful rival,<sup>92</sup> was briefly arrested on trumped up bigamy charges, and the political theater descended further into farce when the President claimed in an interview on 1 June that he had evidence from captured Huks showing that Jose P. Laurel, Claro Recto and other political rivals were secretly in league with the very rebels who, under the Japanese occupation, would have been first in line to assassinate them as collaborators.<sup>93</sup> Meanwhile, the U.S. government had already shown its hand by shielding his popular Secretary of National Defense and emerging competing candidate, Ramon Magsaysay from dismissal the year before when it invited him to Washington. Magsaysay would gain the support of both Laurel and Recto to win a crushing victory over Quirino and his running mate, the occupation period Supreme Court justice Jose Yulo, in a November, 1953 election that saw his populist approach transform the machine politics of the Philippines.<sup>94</sup>

From his view in prison, Pomeroy took a cynical explanation for the pardons to its limit, suggesting that the release of the Japanese war criminals was itself the first step, "to enable Quirino to extend an amnesty to the large group of Filipino collaborators also imprisoned here, for treason and unspeakable abuses against their own people during World War II. Quirino hopes this will gain him

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<sup>92</sup> "If Laurel used a broadsword and Tanada a battleaxe to criticize Elpidio, Recto, a poet in Spanish during his newspaper days, used a rapier." Explaining to Camilo Osias the difference between the definitions of the words 'calamity' and 'catastrophe,' Recto is quoted as saying, "if President Quirino should fall into the Pasig river and drowned, that would be a calamity but if someone fished him out alive - that would be a catastrophe!" Carlos Quirino, *Apo Lakay: The Biography of President Elpidio Quirino of the Philippines*, (Makati, Metro Manila: Total Book World, 1987), 164.

<sup>93</sup> A summary of this episode can be found in *The Complete Works of Claro Recto* v. 7, 597.

<sup>94</sup> This transformation is discussed in Alfred W. McCoy, *An Anarchy of Families: State and Family in the Philippines* (Univ of Wisconsin Press, 2009), 84-5.

votes from the families and townsfolk of the collaborators.”<sup>95</sup> This is unlikely. The transfer or release of the Japanese prisoners was the result of long and delicate negotiations and considerable Japanese pressure. If the release of the collaborators was Quirino’s primary concern, then it was a most elaborately concealed move. However, the idea of linking of pardons of collaborators to political calculation was not limited to communist commentators. Even if it is possible that Quirino really did release the Japanese prisoners because, as he claimed in an interview while undergoing medical treatment in the United States, “I do not want my children and my people to inherit from me hate for people who might yet be our friends...” the fact was that those potential friends, the Japanese people, were also a source of war reparations and future economic cooperation that may have played a significant role in the pardons.<sup>96</sup> The 1948 amnesty debate also offered ample examples of legislators openly debating the political expediencies of releasing collaborators. The congressman Manuel T. Cases, who had predicted that the first amnesty of political collaborators would be followed “within a few days, or a few weeks” by a second amnesty for the *poorarians*, a patronizing term for the poor or misguided who made up the majority of military collaborators, warned the President of the consequences if he did not do so.

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<sup>95</sup> Pomeroy *Bilanggo*, 80.

<sup>96</sup> Quirino quoted in “Sequels: Forgiving Neighbor” *Time* (July 27, 1953) <http://www.time.com/time/magazine/article/0,9171,936085,00.html> Accessed June 15, 2010. Also, around the same time, Quirino told a Japanese diplomat the pardon was entirely driven by a Christian spirit. Nagai Hitoshi suggests another related influence on a religious Quirino may have been the interest the Vatican took in the issue of showing mercy to the Japanese war criminals. Nagai *Firipin to Tainichi Senpan Saiban*, 282. The announcement on the evening of June 27th by the presidential office however, connected the “gesture” of the pardons to the improvement of relations and the reparations issue directly. A more direct *quid pro quo* has also been suggested. While no direct evidence has emerged, Nagai writes there is some possibility that accusations published elsewhere that a direct payment made to the Quirino regime behind the scenes for the pardons may have merit, and statements made immediately after the announcement of the pardons continued to suggest Quirino was hoping the pardons would have an impact on reparations negotiations. See discussion by Nagai, *Firipin to Tainichi Senpan Saiban*, 282-292, and Chamberlain, “Justice and Reconciliation”, 180-190. Ricardo T. Jose suggests that growing U.S. pressure on the Philippines to give up their attempt to secure reparations may have been a factor. Ricardo T. Jose “The Philippine War Crimes Trials, 1947-1949” in National Historical Institute, *Remembering World War II in the Philippines: Proceedings of the Conference “World War II in the Philippines: Remembering 60 Years After”* (Manila: National Historical Institute, 2007), v. 2, 77.

And if the president will not grant an amnesty to the poorarian group, I tell you, I assure you, that the president will be disappointed in the next election. The poorarians will not vote for the president if he forgets them.... He knows that if he does not extend this amnesty there are two groups of voters that will vote against him in the next election. The first group is composed of the voters who are the friends and relatives of those people to whom amnesty is not extended. The second group will be a group of voters who are related to the people who were once helped by these persons to whom amnesty will not be granted...<sup>97</sup>

It was the then congressman Ramon Magsaysay himself, however, who dismissed as trivial the political cost of denying them amnesty in a response to congressman Cases. After all, “what percentage of votes would the *poorarian* spies or collaborators represent,” he asked disparagingly. Not enough, apparently, to defeat his own presidential candidacy in the 1953 election. However, if a political motive for the release could be established, it would at the very least suggest a calculation that the positive response of the two groups Cases refers to, or at the very least the general goodwill generated from a spirit of mercy, exceeded any estimated negative fallout from former victims, their relatives, and more generally those who still shared the rage shown by the prisoners who watched their fellow inmates walk out the gate.

The pardon of the collaborators or the war criminals does appear to have had little immediate impact on the election. An American cable referring to the announcement noted that the “Manila press carried story without prominence, made no editorial comment.”<sup>98</sup> From a broader historical perspective, biographies of Quirino rarely mention the pardon of the Japanese war criminals, let alone that of the collaborators.<sup>99</sup> The issue of the more general abuse of the right of presidential

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<sup>97</sup> *Congressional Record: House of Representatives* *ibid.*, v. 3 no. 14 (Feb 12, 1948), 307. In his memoirs, Quirino attributes the origins of the word *poorarian* to Cases, saying it meant “lover of the poor” but in this context, he seems to be using it to mean the military collaborators and those accused of atrocities who predominantly came from the lower classes. Elpidio Quirino, *The Memoirs of Elpidio Quirino* (National Historical Institute, 1990), 87.

<sup>98</sup> Cable No. 3904 Manila to Secretary of State (June 30, 1953), 796.00/6-3053 RG 59.

<sup>99</sup> I have found only one mention in a biography of Quirino. Raissa Espinosa-Robles, *To Fight Without End: The Story of a Misunderstood President* (Makati, Metro Manila, Philippines: Ayala Foundation, 1990), 223. It claims that, he issued the amnesty “despite a possible negative effect on his campaign,” and includes the quote about passing hate

pardons did, however, make a brief appearance in the last weeks of the election campaign and again in the spring of 1954 once Quirino was out of office. Accusations were made that many pardons were politically motivated and that Quirino made use of pardoned prisoners to “terrorize voters.” This resulted in the resignation of Justice Luis P. Torres from the Board of Parole and Pardons, who insisted that his office had no connection to the pardons issued by presidential decree.<sup>100</sup>

The President’s brother and political troubleshooter Antonio Quirino came to his defense on the matter. Antonio was a remarkable figure in his own right. As a former People’s Court judge he once rejected the “shield” defense used by wartime collaborators in treason trials who claimed they were merely working to protect the people from greater hardship at the hands of the Japanese saying, “‘for the good of the people’ means and should mean the ultimate good; not merely the temporary relief from want and harm.”<sup>101</sup> He then went on to resign his position in order to serve as defense attorney in the treason case of none other than the most distinguished proponent of the “shield” defense, the leader of the wartime republic Jose P. Laurel.<sup>102</sup> During the 1953 election, Antonio rejected the criticism surrounding the “rampant” use of pardons by his brother on a radio show “Meet the Press,” saying that nobody had the right to question the president’s constitutionally protected right to grant pardons to whomever he chose.<sup>103</sup>

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down to the next generation from above. No mention of the pardons are to be found in Salvador P Lopez, *Elpidio Quirino: The Judgment of History* (President Elpidio Quirino Foundation, 1990) or Carlos Quirino *Apo Lakay*. Neither have I found mention of the pardons in discussion of the election and its aftermath in any biographies or works on Quirino’s opponent Magsaysay.

<sup>100</sup> Jorge Rioflorido Coquia, *The Philippine Presidential Election of 1953* (University Publishing Co., 1955), 151-2.

<sup>101</sup> Antonio Quirino’s view on the shield defense is quoted in David Joel Steinberg, *The Philippines: a Singular and a Plural Place* (Basic Books, 2000), 107.

<sup>102</sup> Teodoro A. Agoncillo, *The Burden of Proof: the Vargas-Laurel Collaboration Case* (University of the Philippines Press for the U.P.-Jorge B. Vargas Filipiniana Research Center, 1984), 170.

<sup>103</sup> Coquia, *Philippine Presidential Election*, 152.

After the election a Senate “blue ribbon” investigative committee again took up the issue of Quirino’s excessive use of pardons during his presidency. The committee claimed that two thirds of the approximately 1,200 pardons issued by the president had been made without consultation or the recommendation of the Board of Pardons and Parole, thus exonerating Justice Torres. It claimed that 200 of the pardons were made on behalf of Liberal Party leaders and also criticized the pardon of the collaborators and Japanese war criminals which had been carried out without sufficiently investigating their cases. The result of this investigation was not, however, any legal action against the former president, but a merely a series of proposals to set reasonable limits on the presidential pardon system itself.<sup>104</sup>

### *The Consequences*

As was the case in many parts of the former Japanese Empire, these efforts at retribution were carried out in an environment of significant political instability. We have already seen how the precarious state of British control in Burma determined the outcome the debates over holding controversial trials there. In India, while the worst of the violence was yet to come, British colonial officials already feared the worst as they weighed their options. Just as this environment created abundant political opportunities for individuals and organizations who regarded themselves free of wartime sins, it constrained the available choices for postwar regimes even in those cases where there was some political will to respond to widespread calls for retribution. Unsurprisingly, the choices made in the retribution process came with consequences.

For historians of the Philippines, the legacy of the Japanese occupation and of the 1948 is the historical continuity it represented; it guaranteed the preservation of an entire strata of prewar elites

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<sup>104</sup> John Henry Romani, *The Philippine Presidency* (Institute of Public Administration, University of the Philippines, 1956), 85-87.

who had survived the war, though we might note this was an outcome anything but unique to the former American colony.<sup>105</sup> Whether the accused political and economic collaborators believed, deep in their heart, in the Japanese cause of an Asia for Asians and its fight against imperialism, or not; whether that belief, if sincere, was a betrayal of the nation or the sign of a true patriot; whether they bought and sold goods with the occupiers to vastly expand their wealth or merely to subsist in hard times; whether they believed torture and execution awaited any refusal of Japanese orders or that their cooperation might lighten the burden upon the people — all of these questions, important as some of them might be to the moral dilemmas of collaboration, have little bearing on the fact that large numbers of convictions under a narrow and unsympathetic interpretation of their acts in wartime would have resulted in a fundamental political and social reordering of the Philippines.

There were, however, other consequences resulting from the choices made. When the 1948 amnesty argued that “public sentiment did not extend” to those who waged war on the Philippines and carried out atrocities against the people, it set aside some acts of violence as fundamentally different in nature. It did this in a fashion not entirely dissimilar from the way war crimes trials around the world after World War II, including the Philippines, similarly struggled to create and foster a own realm of universally prohibited violence. However, the trials for treasonous atrocities and war crimes trials differed in two fundamental ways: in the cases of Burma, India and the Philippines that we have seen here, the retributive process created this space, or attempted to create this space, at the conclusion of a process of elimination rather than an active attempt to confront the

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<sup>105</sup> Examples of this focus on the continuities can be found in Alfred McCoy “‘Politics by Other Means’: World War II in the Western Visayas” in Alfred W. McCoy ed. *Southeast Asia Under Japanese Occupation* (New Haven: Yale University Southeast Asia Studies, 1980), 191-246, Satoshi Ara “Collaboration and Resistance: Catalino Hermosilla and the Japanese Occupation of Ormoc, Leyte (1942-1945)” *Philippine Studies* vol. 60 no. 1 (September 2011) 33-68, and Abaya *Betrayal in the Philippines*. My thanks to Ara Satoshi for providing me with a pre-publication copy of his essay. McCoy and Ara interpret both the wartime and early postwar alliances and positions regarding resistance and collaboration through a close and persuasive analysis of the pragmatics of factional politics in local contexts, Iloilo and Leyte, respectively.



horrors of the war. Secondly, in each case the violence at the heart of the charges were, as we have seen, ever-clouded by the primary crime they were judged for: a violation of an allegiance to the nation. When William Pomeroy noted that the traitors who walked out of prison on that July day in 1953 were more despised than thieves and murderers, one might have noted that almost all of those released by President Quirino's pardons were convicted of the *treason of murder*; each held responsible for the deaths of their countrymen at their own or Japanese hands as a result of their collaboration.

Even if the violent crimes in the Philippine trials are considered without the obscuring veil of the treason charges that encapsulated them, the rules of the game when it came to command responsibility differed significantly from the most noteworthy war crimes trial held in the archipelago: the prosecution of General Yamashita Tomoyuki by a U.S. military court for the atrocities of his men. The Yamashita case of late 1945, which resulting in his conviction and execution, established a principle of strict liability in command responsibility for war crimes that would not be approached again in law until the 1977 Additional Protocol I to the 1949 Geneva Conventions or in actual cases until the later stages of the war crimes trials in the former Yugoslavia.<sup>106</sup> Judges in the Yamashita case held that he could only have been ignorant of the widespread atrocities committed by soldiers under his command if this ignorance was a willing one.<sup>107</sup> However, the high bar set for treason convictions in the Philippines virtually guaranteed that

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<sup>106</sup> Charles Garraway "The Doctrine of Command Responsibility" in Doria, José, Hans-Peter Gasser, and M. Cherif Bassiouni *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko*. (Hague: Brill, 2009), 713-723. The most infamous example of how far the liability of command responsibility had weakened in the decades after WWII is the 1971 failure to prosecute Captain Ernest Medina following the My Lai massacre in Vietnam.

<sup>107</sup> Landrum, Bruce D "The Yamashita War Crimes Trial: Command Responsibility Then and Now." *Military Law Review* 149 (Summer 1995): 296. Landrum argues that two Nuremberg Trials of 1948 weakened command responsibility by adjusting the requirement from the idea that the officers "must have known" to a "should have known" standard and thus "a commander's knowledge of widespread atrocities within the command area was

any distance between the violence and the accused would result in a dismissal. In Burma, Aung San himself carried out one of the executions that fell within the realm of prohibited violence that the British had come to adopt in their effort to severely curtail their treason trials in the colony, thus posing for them a unique challenge. In the Philippines, however, the “small fry” collaborators who were so patronizingly referred to as the “ignorant simpleminded credulous Filipino,” by congressman Lorenzo Sumulong in the 1948 amnesty debates, carried out their daily interactions with the Japanese occupier within earshot of the screams of the tortured, and as witnesses or themselves participants in the executions. When they evaded responsibility by claiming to be, “just following orders” to cooperate with the Japanese military or to join in the urgent task of eradicating the “bandits” throughout the land these excuses were, in the majority of cases, dismissed by the Supreme Court, as they were in the trials of war criminals. However, the responsibility for the atrocities that came with military collaboration rarely extended beyond the immediate scene of the crime.

This was a matter of course for those “political collaborators” who were civilian heads of military organizations but who were not close to their day-to-day operations such as Jose P. Laurel, who organized wartime “pacification” committees, and Pio Duran who was nominally vice-supremo of the Makapili. However, it was just as true for actual military commanders, as we saw in the acquittal of the surviving former head of the wartime Bureau of Constabulary, Guillermo Francisco. Even more remarkable, was the inability to account for any kind of command responsibility in the trial of the head of the wartime Manila police, Antonio Torres. Francisco might have, albeit feebly, argued that the national scope of the Constabulary was such that he was completely ignorant of the fact that many of his units, even those who maintained strong connections to some resistance forces, were actively engaged in the suppression of Huks and other guerrillas, regularly engaged in torture,

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rebuttably presumed rather than irrebuttably presumed.” *ibid.*, 298. This less harsh “should have known” standard is the one that is generally by the International Criminal Court today.

and that some units carried out summary executions. It is far harder to imagine that Torres could have been wartime Manila police chief without being aware of the deep collaboration between his officers and the Japanese military police, or the torture and execution of suspects being carried out by the secret service division of the Manila Police Department that resulted, for example, in the treason conviction of one of its officers, Pedro Santos Balingit.<sup>108</sup> As in the case of Francisco, the case against Torres was dismissed even before the 1948 amnesty. This exoneration of wartime guilt so emboldened Torres that he immediately proceeded to petition for the removal of his replacement, Eduardo Quintos, so that he might be rightfully restored as chief of police. The mayor of Manila turned down his request in 1948, but he pressed his case with a letter to President Quirino and then directly brought a legal case against police chief Quintos. The Supreme Court itself ruled on the case in April 1951, when the majority opinion rejected his arguments.<sup>109</sup>

Even if a principle of command responsibility had been adopted establishing liability on either a narrow or broad level, the limited treason trials of military collaborators and perpetrators of atrocities could not hope to offer anything close to a full reckoning with the wartime torture, arson, rape and summary executions of the kind described in the cases that did reach the courts, precisely because collaborators had no monopoly on these acts. The brutality of some guerrillas rivaled that of the worst atrocities of the occupying forces and their domestic allies. Ray Hunt, himself a mid-level guerrilla leader in Luzon, had great respect for the conduct of some of his fellow leaders but conceded,

Many a Filipino “guerilla” was concerned mostly to take advantage of current confusion to avenge himself on old enemies, destroy some rival family, betray a political foe to the Japanese, or simply to indulge a taste for sadism. Cruel as the Japanese were to everyone else, cruel as some despicable Americans were

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<sup>108</sup> *People vs. Pedro Santos Balangit* G.R. L-1298 (May 31, 1949) LawPhil.

<sup>109</sup> *People vs. Antonio C. Torres* G.R. L-3304 (April 5, 1951) LawPhil.

to suspected Filipino collaborators, nobody exceeded the savageries various deprived Filipinos inflicted on their own countrymen.<sup>110</sup>

Hunt struggled with his own issues of command responsibility. Some guerrillas under his command captured a spy who, in a public display to impress some villagers, “was bled to death, and each guerrilla in the band that had captured him drank his blood. His heart was then torn from his body and roasted over an open fire, after which each guerrilla ate a bit of it.” Hunt was disgusted but took no action against them, since “to have executed the whole guerrilla troop responsible would have demoralized all my men...”<sup>111</sup> Though facing an entirely different scale of violence, similar words could have easily been uttered by Colonel Nagahama Akira, head of the military police in the occupied Philippines. During his American military war crimes trial Nagahama claimed that, despite an attempt to ban torture and enforce a more humane policy towards prisoners, “the tremendous weight of the forces which worked against any possible materialization of the good intentions I possessed,” robbed him of success and “each day that passed strengthened the hands of those who from the outset could not bring themselves to follow a course other than outright force and the imposition of fear.”<sup>112</sup> The American guerrilla claims to have provided some minimal judicial proceeding for arrested spies and collaborators under his direct control, unlike many other guerrilla groups, but since there were no means to hold them, “the accused was either found innocent and released or found guilty and executed.”<sup>113</sup> Hunt could have probably sympathized with a young Japanese language teacher Ogawa Tetsuro (小川哲郎), attached to a Japanese military unit in Luzon,

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<sup>110</sup> Hunt and Norling, *Behind Japanese Lines*, 72. This was a rewritten and reworked version of Hunt’s own memoirs together with material from interviews by Norling of Hunt, written in the first person, but it is impossible to know if this is a direct quote of Hunt’s own words or changed by Norling in the rewriting.

<sup>111</sup> Ibid., 127

<sup>112</sup> Quoted in Syjuco *Kempei Tai in the Philippines* 83. Original in *U.S.A. vs. Akira Nagahama*, Japanese War Crimes Trials, Bundle No. 74 Vol. XII, pp. 22-23, Philippine National Archives.

<sup>113</sup> Ibid., 129.

who wrote “Kill or be killed; that was the way of the battlefield, the way of war. Yet, to this day I can’t forget the cry of the Filipino, ‘*Hinde ako masama!*’ (I’m not bad).”<sup>114</sup>

This does not mean that atrocities committed by guerrillas during the war received no attention at all from the postwar courts. However, long before President Roxas issued his 1948 amnesty for political and economic collaborators, he had on September 7, 1946 issued Proclamation No. 8, “Granting amnesty to all persons who committed acts penalized under the revised penal code in furtherance of the resistance to the enemy.”<sup>115</sup> The guerrilla amnesty made exceptions for “crimes against chastity” and those carried out “from purely personal motives.” Until there is a study of the work of the Guerrilla Amnesty Commissions formed following the amnesty to decide what cases fell under these exceptions, however, it is hard to determine how seriously these crimes were taken.<sup>116</sup> It is interesting to note, however, that the exception for crimes committed for “purely personal motives” mirrored the burden borne by prosecutors of treason convictions. Whereas conviction for treason required proof of adherence to Japan, any prosecution of guerrilla atrocities, no matter how horrifying, required positive evidence that the accused was not actually motivated by the spirit of resistance.

The most terrible massacres found in the treason cases considered here are from the final chaotic period from the fall of 1944 to the summer of 1945 were a period of desperation for both the retreating Japanese and their allies. It peaked following the American landings and the vast increase

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<sup>114</sup> Ogawa, Tetsuro. *Terraced Hell; a Japanese Memoir of Defeat & Death in Northern Luzon, Philippines*. (Rutland, Vt: C. E. Tuttle Co, 1972), 56. The transcription should probably be: Hindi ako masama.

<sup>115</sup> Proclamation No. 8 (1946) *Official Gazette* <http://www.gov.ph/1946/09/07/proclamation-no-8-2/> Accessed June 15, 2010.

<sup>116</sup> The Guerrilla Amnesty Commissions were formed by Administrative Order No. 17 (November 15, 1946) *Official Gazette* <http://www.gov.ph/1946/11/15/administrative-order-no-17-2/> Accessed June 17, 2010. I have been able to locate only around a dozen criminal cases against those claiming to be former guerrillas but whose murder or other violent acts were not covered by the amnesty that reached the Supreme Court but the records of courts of first instance would surely yield more.

in guerrilla attacks that followed. It was in these months that vengeance and all manner of score settling—in the name of the resistance—rose to the level of a mass hunt. In the amnesty debate of 1948 congressman Leon Cabarroguis deplored the fact that a high wartime official in his own Luzon province of Nueva Vizcaya would go free while the 300 spies and “magic eyes” who he claimed served him would remain in prison. Congressman Alejo Santos seemed unconcerned, “Most of them were killed on the road to Kiangang; when the guerrillas captured them, they were given speedy justice.”<sup>117</sup> One witness in Batangas province, south of Manila, described how everyone beat and kicked tied-up “Makapilis” captured in his area, before they were driven away by the hundreds. The fate of others was less ambiguous, “I saw at least 50 of them, also tied together, brought out to the sea on bancas. They never came back.”<sup>118</sup> In newly captured Cebu, which perhaps not coincidentally is overrepresented in the post-amnesty treason trials, many collaborators turned themselves in directly to the American Counter-Intelligence Corps in order to avoid the “speedy justice” that awaited them at the hands of guerrilla liquidation units sometimes called “trigger squads.”<sup>119</sup>

These darker memories of guerrilla justice were not suppressed and commonly found expression in postwar films. In the “American Guerrilla in the Philippines” (1950) a scene is dedicated to the confrontation between a village and a fleeing informer. While the village looked on quietly, the informer was offered a piece of chicken as his last meal. Before he was shot, he was simply told, “You are a fifth columnist and a bad man and we are going to kill you.” In “Lost Battalion”

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<sup>117</sup> Republic of Philippines *Congressional Record: House of Representatives* v. 3, no. 14 (Feb 12, 1948), 300. Many of those who fought with or supported the Japanese retreated with them in the final days to the area around the Kiangang valley. Kiangang itself was captured in mid-July but only after some of the most bitter fighting of the campaign. Robert Ross Smith, *Triumph in the Philippines* (Government Printing Office, 1963), 573-7.

<sup>118</sup> Interview of Roberto Collegio, quoted by Angelito L. Santos in “Gleanings from a Cruel War” in Angelito L. Santos and Renato Constantino, eds., *Under Japanese Rule: Memories and Reflections* (Quezon City: Foundation for Nationalist Studies, Inc. and BYSCH, Tokyo, 1992), 56-7.

<sup>119</sup> Duval A Edwards, *Spy Catchers of the U.S. Army in the War with Japan: The Unfinished Story of the Counter Intelligence Corps*, (Gig Harbor, WA: Red Apple Pub, 1994), 214. On “trigger squads” see Syjuco *Kempei Tai in the Philippines* 59.

(1962) the main antagonists are not the Japanese, but a cruel band of rival guerrillas led by the smooth talking villain Bruno. In “Back Door to Hell” (1964), two American officers try to save Japanese prisoners of war from torture at the hand of Filipino guerrillas but during interrogation the officer, played by a young Jack Nicholson, apparently failed to sufficiently impress them with his Japanese language abilities. The guerrillas took over, extracted the required information by torture and executed the prisoners. These scenes were structured not to condemn the Filipino guerrillas for their cruelty. They were designed to highlight the naivety of the newly arrived Americans, and presumably the audience, who did not understand the realities of war. In “Manila, Open City” (1968), the audience learns that when it came to the Makapili, “the guerrillas have been butchering them ever since they moved into town” and one of the leading Filipino characters in the film, when exposed as a “Makapili informer” is shot and left to die by the road. The director offers him a brief hint of sympathy as the audience watches him die, giving him the lines, “You want to know why? I don’t know why. I just wanted to get along.” The line was a well chosen shibboleth used by those accused of wartime collaboration around the world. Rarely, however, did a film show greater compassion for the fate of an executed collaborator than the 1976 “Tatlong Taong Walang Diyos” (Three Godless Years), a film written and directed by Mario O’Hara produced during the Marcos dictatorship. The story follows a schoolteacher Rosario (Nora Aunor) through her experiences of rape by, and later dependence upon a Japanese-Filipino officer during the occupation. Her tragedy is complete when the war ends and, in a powerful scene, she is shorn and killed by a vengeful mob.

Americans who arrived on the shores of Leyte in October, 1944 and on Luzon in January, 1945 stepped, therefore, into a world without mercy. William A. Owens, an American Counter-Intelligence Corps agent had as one of his central tasks the investigation of cases of collaboration with the Japanese and his records, along with those of other agents, would form the

foundation of evidence in all later treason trials. However, when he arrived in central Luzon where USAFFE guerrillas, which included Hunt's forces, were engaged in a full scale civil war against the Huk guerrillas, he was ordered to, "restore law and order." To him, the details of his mission, "sounded very much like a Japanese peace and pacification campaign."<sup>120</sup> His account of the spring of 1945, while the Japanese were still fighting a retreat in the north of the island, is more than anything a candid account of his horror at the violence around him as he records the morbid digging up of the corpse of a local Mayor who had been "foxholed" (buried alive) by Huks that were merely carrying out their standard wartime punishment for uncooperative officials branded collaborators, and his gradual realization that the USAFFE guerrillas who opposed them could be equally brutal, torturing and executing any suspected Huks.<sup>121</sup> When Owens confronted a USAFFE officer about a standing order to "shoot Huks on sight," the commander, "was courteous to me but firm in his conviction that shooting Huks was the only way to stop them."<sup>122</sup>

The continuation of civil violence into the aftermath of the Japanese occupation, the devastation of the economy by the war, and a rapid, if temporary move by the United States to limit its interventions in Philippine affairs in the immediate aftermath of independence in 1946 ensured that, even if there had been widespread willingness to confront the atrocities of war committed by its own people in more general terms, such an effort would have faced insurmountable financial and political obstacles; a fact not at all untypical for post-conflict societies down to the present day. A January 1946 report submitted to U.S. Attorney General by Walter R. Hutchinson lamented the fact

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<sup>120</sup> William A. Owens. *Eye-Deep in Hell: A Memoir of the Liberation of the Philippines, 1944-45*. 1st ed. (Dallas: Southern Methodist University Press, 1989), 128. In descriptions of his own interrogations of Filipinos, Owens was perfectly comfortable threatening them with all the favorite Japanese methods of torture, but claims not to have carried through with the threats.

<sup>121</sup> See *ibid.*, 142.

<sup>122</sup> *Ibid.*, 163.



that, “instead of disposing of the cases in the same manner as the other United Nations, we gave the basic and gigantic problem of collaborationism to the Commonwealth government...”<sup>123</sup> However, had the outgoing colonial power set out to try any collaborators themselves on the very eve of Philippine independence, it is hard to imagine things going better for the United States than they did in India for the British. This is especially true for all cases of treason, but it is unlikely to have fared better if they limited cases to those involving atrocities and omitted the charge of betrayal. Today there continues to be broad reluctance in most civil war-torn societies for international *assistance*, let alone the *supervision* of retributive or reconciliatory processes not only because of a distrust in international institutions to fairly judge violations of universal rights, but a fundamental feeling of a monopoly over the right of the *nation* which claims the suffering to decide the forms and outcomes of transitional justice—whether or not the victims and survivors constituted a representative part of that imagined community.

If this is still true in our own age, then it was all the more the case in the aftermath of World War II, when new innovations in international law, including the development of the concepts of crimes against peace and humanity, had enough difficulty in establishing a footing without having to confront the fundamental hybridity of the conflicts they addressed: relatively long military occupations in which some of the most brutal crimes of war happened far from the battlefield but, more importantly, were carried out by a thoroughly mixed *dramatis personæ* that included both foreign and domestic perpetrators. The explosion of extrajudicial killings and other forms of retribution in the period of transition was the most tragic but predictable outcome. In many liberated territories of the late 1940s, however, the only real chance for survivors of the atrocities of war carried out by domestic perpetrators to find redress through a judicial process, whatever its weaknesses, was

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<sup>123</sup> Cited in David Joel Steinberg, *Philippine Collaboration in World War II* (Ann Arbor: University of Michigan Press, 1967), 132.

through charges of treason. As we have seen in India, Burma, and the Philippines, not only did the transformation of treason trials into, essentially, trials for crimes of war, emerge only haphazardly in these cases thanks to the rapidly shrinking support for a wide sweeping purge of collaborators of all colors, but they were marred by the fact they were targeting “*turncoats* who happened to be *brutes*” while leaving it abundantly clear to everyone that the attempt to confront the wartime legacies of the latter would only be attempted through a process of purging the former.

### *The Aftermath*

In the Philippines, the inability of any of the postwar and post-amnesty treason trials, to come close to the creation of a more general realm of prohibited violence is clear from the continuities of violence in the postwar period. The Philippine Constabulary, already practiced in the art of crushing agrarian dissent before the war, continued to gain experience working side-by-side with the Japanese soldiers who were fresh from the mopping up campaigns they had carried out throughout China. Torture and summary executions by their successor, the Military Police Command (in 1948 renamed again the Philippine Constabulary before being fully merged into the Armed forces in 1950), especially in their campaigns against the Huks, continued into the postwar period, peaking during the “Iron Fist” suppression campaign from 1946-1949.<sup>124</sup> The most infamous perpetrators of violence in this period were the Nenita “skull squadron” led by the Napoleon Valeriano and other similar “hunter-killer” units.<sup>125</sup> The sheer scale of atrocities appears to have declined overall in the early 1950s with the rise of new counter-insurgency approaches under the leadership of Defense secretary

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<sup>124</sup> A. J Birtle *U.S. Army Counterinsurgency and Contingency Operations Doctrine, 1942-1976* (Washington, D.C: Center of Military History, U.S. Army, 2006), 56.

<sup>125</sup> Kerkvliet, *The Huk rebellion*, 196. Michael McClintock, *Instruments of statecraft: U.S. guerrilla warfare, counterinsurgency, and counter-terrorism, 1940-1990* (New York: Pantheon Books, 1992), 120

Magsaysay, despite the suspension of habeas corpus by President Quirino in October, 1950.<sup>126</sup>

Meanwhile, the “trigger squads” of the Hukbalahap and their postwar successors continued their wartime practice of capturing, sometimes torturing, and finally shooting or burying alive “traitors” in areas of their control. As their circumstances worsened and the rebellion weakened, their liquidation of suspected spies and informants increased, not only further alienating them from the masses they claimed to represent, but cannibalizing their own ranks as a result of internal purges. By 1951, some of its squadrons were carrying out orders to liquidate Filipinos who defied a Huk boycott and voted the midterm elections, while others were asked to liquidate family members who had begged them to surrender. The longtime former military commander of the Huks turned apostate Luis Taruc noted in his prison memoir, “One cannot tell the story of the Huk rebellion without remembering that the ruthlessness of its opponents diminished with the years; the government came to conduct the fight more intelligently as time went on. But the reverse was true of the Communist-led Huks.”<sup>127</sup>

Nothing better symbolizes the continuity of occupation period horrors into the postwar, however, than the survival, especially before 1950 but sporadically in counter-insurgency campaigns in decades since, of the practice of *zona*. In June, 1961 a seminar on the lessons to be learned from the Huk suppression campaign was held at Ft. Bragg, North Carolina. Following a lecture on military operations by “skull squadron” commander Napoleon Valeriano, Major Medardo T. Justiniano took

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<sup>126</sup> The suspension of habeas corpus allowed the Constabulary to detain suspected Huks for an indeterminate period of time. Though this was an alarming reduction in the protection of a suspect’s legal rights, in the short term it may have had the immediate effect of contributing to a decline in summary executions and the number of those “killed while trying to escape” given that there was no longer any fear that those captured with little evidence of their guilt would be released the following day. See Birtle, *U.S. Army Counterinsurgency*, 60. Lieutenant Colonel Edward Landsdale, the leading American intelligence advisor to Magsaysay and the Huk suppression campaign claims that Magsaysay and himself were gravely concerned about the effects the declaration and sought to limit its effect. Edward Geary Lansdale, *In the Midst of Wars: an American’s Mission to Southeast Asia* (Fordham Univ Press, 1991), 65.

<sup>127</sup> Luis Taruc, *He who Rides the Tiger: the Story of an Asian Guerrilla Leader* (Praeger, 1967), 52. On liquidations during the 1951 elections, see page 94, and on liquidation of family members, page 149.

the podium and, in his talk on combat intelligence, introduced his audience to the use of the “magic eye” against the Huks.

...[It] is extremely difficult for an intelligence officer to identify which man is an enemy and which one is not. That constant problem we often solved by the use of surrenderees, and in which we found the Magic Eye technique effective. This Magic Eye system allowed us to take advantage of the psychological opportunities and at the same time protect the life of the families of the surrenderee.

Take for instance a situation wherein we rounded up all the civilians of a town. We would construct a special tent for the prisoner, with a peephole. He would be concealed while the civilians were made to pass before this “Magic Eye,” hidden in a tent. Naturally all these people would start feeling a sense of fright because they might be identified. This type of operation helped us a lot tactically and psychologically.<sup>128</sup>

Colonel Valeriano and Major Charles Bohannon, a U.S. advisor in the campaign who gave his own lecture after Justiniano, may have shifted uncomfortably in their seats at this enthusiastic description of the Magic Eye. In a book published by the two the following year, they were far more critical of the use of zoning as the “standard technique for obtaining information from a presumably hostile village” from 1946-1950. Though they claimed Constabulary forces did not “resort to Japanese brutalities” when carrying it out, they recognized that, “After the Japanese occupation, zona connoted unlicensed brutality, which Huk propaganda exploited.” Describing in great detail the logistics of one “well-planned” zoning operation in which adult villagers passed “under the scrutiny of the hooded ‘magic eye’ informants,” the authors noted that, “a villager will scarcely react sympathetically to government forces after such an action.”<sup>129</sup> When he became Secretary of National Defense, Ramon Magsaysay, whose wartime guerrilla forces would have themselves been targeted by zoning

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<sup>128</sup> “Counter-Guerrilla Operations in the Philippines, 1946-1953” A Seminar on the Huk Campaign Held at Ft. Bragg, N.C., 15 June 1961 Transcript at <http://smallwarsjournal.com/documents/picounterguerrillaoperations.pdf> Accessed July 1, 2010.

<sup>129</sup> Napoleon D. Valeriano and Charles T. R. Bohannon, *Counter-Guerrilla Operations: The Philippine Experience* (New York: Praeger, 1962), 126-129.

operations during the occupation, limited their use, “which had been one of the greatest sources of bitterness and complaints against the Armed Forces.”<sup>130</sup>

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<sup>130</sup> Ibid., 132. The authors added, however, that “occasional village screenings” continued to be “vital” to counter-guerrilla operations.

### **Part III: Winning Over Puppets and Reforming Traitors**

In the previous chapters we have seen how several efforts at carrying out limited retribution against military and police collaborators were gradually replaced by efforts to punish only those responsible for atrocities. In most cases, these proceedings were still carried out under laws against treason and sedition. Military and police collaboration with the Japanese empire presented postwar regimes with their most challenging class of traitors. Together with informers, these figures were more likely than anyone to participate directly or indirectly in the most violent acts of the occupation. Whether they were Indian police officers torturing prisoners on behalf of the Japanese military, Burmese forces taking over villages long under the control of other ethnic groups, or Philippine Bureau of Constabulary units who selectively crushed rivals in a divided resistance, these forces could not be counted upon to, as some postwar apologists might like to believe, insulate a vulnerable populace from the repression of a foreign occupier. Not only did some military and police collaborators show a greater propensity for brutality than the Japanese units they accompanied—sometimes motivated by personal hatreds or a fear of what awaited them at the hands of their enemies after Japanese defeat, but the instability created by a contested military occupation often allowed parties of both new and old social, political, and ethnic conflicts to find violent resolution under the protection and legitimacy provided either by Japanese occupation authorities or those who proclaimed the cause of resistance against them.

The ranks of Japan's armed allies, including thousands of occupation police, militias, auxiliaries, "puppet" soldiers, and colonial levies represented a cross-section of occupied societies distinctive only for the heavy representation of the most disadvantaged classes. The Makapili of the Philippines, recruits for the Burma Independence Army, the hundreds of thousands of soldiers who fought with Japanese forces in China, and the Korean colonial police forces may have all have had leaders from the ranks of the elite, but were mostly made up of farmers, refugees, or the urban poor.

To dismiss every member of a relatively small and short-lived armed group such as the Makapili as deviants and thugs was one thing—something made all the more easy by associating them with the terrifying magic eye informers, but it was more difficult for postwar regimes, especially in the Philippines, Korea, and China, to account for the years of involvement by large numbers of ordinary citizens in occupation institutions of repression. The Philippine Bureau of Constabulary was not just a good cover for resistance work, it was a well paid position in a time of wartime hardship. A young Korean with a limited education who entered the police had better prospects for advancement than in most alternate careers in a colony filled with discriminatory barriers. A Chinese village militia that was once supported by a long-since-fled landlord may have found cooperation with the local Japanese garrison a far less daunting option than going in search of embattled Communist guerrillas in the hills.

From the perspective of resistance groups, and in the heroic narratives they passed on to postwar regimes, these figures earned a place of infamy in the pantheon of treasonous villains found around the world after the Second World War, alongside the informer, the interpreter, the enemy's mistress, the spineless merchant, and the puppet leader. However, what distinguished most of the military and police collaborators from the rest of these hated characters was the anonymity of their numbers. Unlike the toady interpreter or treacherous informer, usually portrayed as a hunched and effeminate figure standing behind a Japanese soldier, or the image of the bejeweled mistress walking proudly with her officer and patron, the mass of hundreds or thousands of militia and police were mostly faceless figures, often depicted, accurately in many cases, as dirty and disheveled in contrast with the crisp uniform of the occupier. Whatever violent acts they partook in, it was easier to see these men not as lacking patriotism but merely misguided souls still unclaimed by the nation.



Far more important than the anonymity of numbers, however, was the threat those numbers constituted to the survival of any postwar regime. In most transitional regimes, whether they are emerging from a foreign occupation, a civil war, or a revolution, a new government must evaluate at least the four most challenging costs of dismantling or and punitive action against domestic enemy forces: 1) the lost opportunity or challenges of employing these forces for their own purposes, 2) the active force required to carry out disarmament or retribution, 3) the potential disorder and discord caused should retributive violence get out of control, and 4) the possible threat of these forces embracing a political rival rather than risk punishment. The strength of calls to punish treason and avenge specific atrocities committed by these forces are factors which can limit the range of viable choices or at the very least seriously affect the outcome, thus acting as a potential moral and cultural obstacle to what might otherwise be a raw political or military calculation.

In early postwar India and Burma, as well as in the case of the Dutch East Indies, where the Japanese trained PETA was the equivalent of the Indian National Army and the Burma Independence Army, the victorious European empires had to contend with thousands of trained soldiers who were not only sworn enemies but also had an unquenched thirst for independence. Their professed cause was in no way discredited by Japan's surrender. On the contrary, it was, as we have seen in Burma, emboldened. Demobilizing these forces was a significant challenge; large scale retribution, all but impossible. Before the end of the decade, all three colonies had gained independence, but only at the cost of a violent partition in India, the beginning of a decades long civil war in Burma, and a hard fought revolutionary war in Indonesia.

In the Philippines, where a scheduled 1944 independence from the United States was only slightly delayed by the Japanese occupation, the returning Americans and the new government of the new 1946 republic faced its most serious armed competitors not among the ranks of the

collaborators, but from the resistance, especially the ideologically committed Hukbalahap. The Philippines was offered a nominal sovereignty by Japan at the same time Burma was in 1943, and the Japanese empire deployed much of the same rhetoric against Western imperialism. However, the Bureau of Constabulary, though like the INA composed in great part by POWs and offered “rejuvenation” under Japanese tutelage, never much resembled either the INA or the BIA and its successors in Burma. The Philippine BoC neither unified behind charismatic nationalist commanders nor was it an army that cultivated a strong dedication to the cause of an elusive independence. Its prewar composition, as well as its wartime and postwar incarnations all became closely tied to local collaborating elites or, covertly, with factions within the local resistance that reflected longer trends in the power dynamics of the community, rather than with a broader national movement. Alternative forces which may have borne greater resemblance to Burmese and Indian counterparts, including the Makapili, were given little opportunity to develop, and were plunged into the work of violent repression the moment they came into existence.

In the Philippines, postwar treason prosecutions that could well have placed tens of thousands of constabulary officers on trial for their wartime actions were largely prevented, as we have seen, by the establishment of generous “loyalty boards” which allowed constabulary officers to quickly resume their service after Japanese surrender, and the 1949 Supreme Court ruling *People vs. Jose de Castro* which made explicit the fact that, unlike membership in the Makapili, service in the Bureau of Constabulary was not, by itself, treasonous. The trials that followed focused upon the atrocities of the occupation, but continued to prosecute these crimes as treason, with the complications and biases that we saw at work in the previous chapter.

This examination of the costs, distortions, and abandonment of treason prosecutions against wartime military and police collaborators, and their relationship to the trying of atrocities has

focused for the most part on one particular legal approach to what posed both a political and military challenge to postwar regimes. With the exception of police dismissals in Malaya, little has been said of the complex administrative steps taken to exclude wartime collaborators, whether they were military, police, or held other positions. While not as sensational as treason prosecutions, this broader and rarely well-documented process was also important. In India, the British attempted, with only limited success, to prevent INA soldiers from becoming part of the police or Indian or Pakistan army after 1947.<sup>1</sup> In Burma, one of the most tense and involved conflicts leading up to independence in 1948 was in determining how many former BNA officers could be absorbed into the British army, and whether to permit many of those among them were not accepted to constitute a uniformed militia force under Aung San's leadership. In the Philippines, not enough is known about the workings of the loyalty boards or about other leadership changes in the Constabulary to explore the ways in which administrative methods were used to reform, or merely transform this institution in the immediate aftermath of the war.

Trials and dismissals were not the only—and in many contexts not the primary—means to handle thousands of treasonous military and police. Another choice was the mass incorporation of these forces into the institutions of the postwar order. If punitive measures or the demobilization and dismissal of collaborators involved heavy costs, the simple mass absorption of the same into the postwar state could be far more than simply a logistic challenge: it could threaten the legitimacy of the regime. The absorption of thousands of Burmese National Army (later Patriotic Burmese Forces PBF) forces into the British army and the continued service of Philippine Bureau of Constabulary forces that had passed loyalty boards are two Southeast Asian examples of this process of

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<sup>1</sup> "Note of Meeting Between Field Marshall Viscount Wavell, Cabinet Delegation and Provincial Governors" L/P&J/5/337 ff 32-4 (29 March, 1946) Office Records India and Office Library India, *The Transfer of Power 1942-7* (London: H.M.S.O, 1970), vol. 7, #20, 48-50. Also "Note by Field Marshall Viscount Wavell" Wavell Papers (13 May, 1946) *ibid.* vol. 7 #270, 538-39.

incorporation. In Burma, as we saw, this would come at the cost of increased tensions with those ethnic groups that were most effected by wartime repression. In the Philippines, opposition forces and the Huk rebels made ample use of the Constabulary's wartime conduct in its attack on the regime. In neither case, however, was there any significant effort by the postwar military establishment to force its new members to confront the conduct of military collaborators during the war.

This dissertation closes with an examination of an elaborate and creative approach to military collaborators taken by Communist forces in Shandong province. Embracing the early approach taken by the British towards INA "patients" or the Japanese to its Philippine prisoners of war, the Communist Party in Shandong treated military collaborators with Japan as men malleable enough to be cured of their affliction. While the wartime years usually figure as a prelude in most of the discussion of previous chapters, this chapter must reverse that order to spend the bulk of its time on the war years from 1937 until Japanese defeat. Whereas earlier chapters portray the gradual formation of a stable policy, in this chapter we will see a relatively stable approach briefly disintegrate in the chaos of Japanese surrender, only to reestablish itself in the civil war that followed.

But what was this affliction? National betrayal or a propensity for violent repression? Chinese Communist efforts to win over military collaborators up to Japanese surrender in Shandong used threats of punishment for both and yet depended upon a willingness to completely overlook any sin in exchange for a timely surrender. This feat was accomplished by separating the Party's handling of military collaborators from its punishment of other traitors through mass trials. For military collaborators to overcome their illegitimate or "puppet" nature, a change of loyalty was all that was required. In the early postwar, the re-education efforts launched by the Party continued for those few Japanese-allied "puppet" soldiers who had the misfortune of finding themselves to be prisoners of

war in the summer and fall of 1945 but these military collaborators were no longer segregated from an increasingly unruly mass “Oppose Treason” mass campaign of the early postwar.

## Chapter 7: Winning Over the Puppet Armies of Shandong, 1937-1949

Nowhere in the Japanese Empire was military collaboration more important and carried out on a larger scale than in occupied China. By 1945, there were over 900,000 Chinese men under arms garrisoning towns and strongholds on behalf of the Japanese Expeditionary Army and its Chinese client regime in occupied Nanjing.<sup>1</sup> In accounts of Japan's conquests on the Chinese mainland from 1931 to 1945, these Chinese soldiers are remembered for their incompetence, their treason, and their cruelty.<sup>2</sup> They not only prolonged the Japanese occupation, but contributed to its brutality as active participants in mop-up campaigns throughout the countryside. While Japanese training and discipline may have attempted to curb some of the excesses of their new recruits, their propensity for violence was not one of them.

For the Chinese Communist Party, these military collaborators played an important role in the Party's postwar political struggle. They served as the most direct link between the repression of the Japanese invaders, and that of a returning Nationalist government which integrated the Chinese collaborationist armies into its own forces. By absorbing large numbers of these tainted and despised armies, Chiang Kai-shek's Nationalist government inherited a stain of treason, widely invoked in variations of the phrase, "the Chiang conspiracy to merge with the enemy and puppets" (蔣敵偽合流的陰謀).<sup>3</sup> In Communist propaganda, the Nationalist government was to be remembered not for

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<sup>1</sup> To this, add tens of thousands of police who helped crush resistance in the cities, and thousands of informers and military police auxiliaries who aided Japanese counter-insurgency efforts throughout the country.

<sup>2</sup> In addition to Han Chinese, Mongolian troops represented a very significant number of military collaborators in Northern China. White Russians and local Korean minorities were also found in significant numbers.

<sup>3</sup> Many variations of this phrase can be found in Communist newspapers. For example "Chiang Kai-shek's reactionary faction openly merged with the enemy and puppets." in "紀念七七抗日戰爭十二周年" [Commemorating the 12th anniversary of the July 7th War of Resistance Against Japan] *Renmin Ribao* [The People's Daily] (9 July, 1949), 2. Also found in various propaganda. One example is on a poster announcing the sentencing of a Japanese collaborator. "蓬萊縣政府布告" [Announcement of the Penglai county government] (9 September, 1945)

leading the national resistance, but for colluding with the enemy and reabsorbing its despised henchmen.

This chapter does not fundamentally challenge this portrayal of the Nationalists. No shortage of Chinese war criminals and other unsavory officers made their way from allegiance to Japan to fight for the Nationalists in the civil war of 1945-1949. Indeed, many of the “puppet” soldiers began their careers in units at least nominally loyal to the Nationalist government. Returning to the Nationalist fold after the war, former “puppets” found good company and familiar assignments among the executioners of Nationalist pacification teams. Deployed once more into the field, they were asked to exterminate the real traitors: Communist bandits (共匪).

Rather than the Nationalists and their treasonous inheritance, the focus here will be on the Chinese Communist Party (CCP) wartime and early postwar response to military collaboration with Japan both as seen in its central party directives, and as carried out more locally in the Shandong Base Area. The CCP and its resistance forces in Shandong province understood the vital role played by military collaborators in preserving Japanese control over occupied areas, especially after 1942. They also understood how valuable these armed groups could be as sources of information, supplies, and in the end, of fighting men. As the chapter will show, the Party placed tremendous emphasis on “winning over” (爭取) or else “disintegrating” (瓦解) Chinese units under Japanese command and worked hard to separate out the category of military collaborators from other traitors. Historians, including the producers of the accepted narrative put forth by the CCP itself, often emphasize the greater success—or treachery—of by the Nationalist party in absorbing these Chinese forces in the

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山東資料館 [Shandong Provincial Archive] G031-01-0058-001. Hereafter SZ. The online Shandong gazetteer has an entire section dedicated to the issue. “粉碎蔣，日，偽合流” [Smashing the Merger of Chiang Kai-shek, Japan and the Puppets] 山東省省情資料庫 [Shandong Province Provincial Information Resource Depository] <http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=17&rec=506&run=13> (Accessed: 1 July, 2012) Hereafter SSZ.

immediate aftermath of Japanese surrender. However, this often ignores the considerable numbers of military collaborators who covertly cooperated with or defected to Communist control.

That some of these commanders were responsible for horrendous violence against civilians was no insurmountable obstacle to their redeployment, even when the Party had helped mobilize rallies condemning these same men for their brutality. Instead of being targeted by the local teams of the “Traitor Elimination Bureau,” (鋤奸部) which dealt with informers, spies, trotskyites, and collaborationist officials, up until Japanese surrender military collaborators with Japan were wooed by agents of the “Enemy and Puppet Work Bureau” (敵偽工部) who offered very generous terms for those who defected in time. After being “won over,” collaborationist units were in many cases not dissolved or disarmed, nor was it official policy to do so. Following a common practice in Chinese military campaigns well into the 20<sup>th</sup> century, these units were simply renamed and their commanders often allowed to remain in control.

In Communist controlled areas of Shandong, addressing the role of either treason or atrocities within a process of retribution for military collaborators was in large part postponed until the end of the conflict with Japan, even if accusations of national betrayal and brutality played a leading role in wartime propaganda against them. While expedience in dealing with military collaborators was fairly universal in World War II, as in other wars, this was facilitated in this particular case by a wartime institutional division of labor that served to isolate most military collaborators from the more unpredictable outcomes of a “traitor elimination” process which was given an ever increasing “mass character” (群眾性). Some military collaborators did face assassination, but these were at the hands of the special armed operatives of the Enemy and Puppet Bureau who served distinctly tactical and military rather than political goals, let alone a mandate to carry out retributive justice.



At the end of the war, this division broke down for a time. Those military and police collaborators who failed to change sides in time and found themselves in the custody of Communist allied forces in Shandong in the weeks before and after surrender were turned over to cadres of the Public Security Bureau and its traitor elimination work. If, up to this point, defection might allow them to escape punishment as traitors or face close scrutiny for wartime violence, they were now potentially liable for a number of crimes, including that of being traitors, war criminals, or more vaguely, “bad elements” (壞份子). Together with other collaborators, many were forced to undergo “training” together and to make public, sometimes collective, expressions of remorse. They were to benefit from an official policy of magnanimity and only a small minority of them subjected to a process of mass trials for collaborators that were taking place at the same time. Sometimes, as we shall see, calls for vengeance by the communities who suffered at their hands during the occupation made a policy of leniency a challenge for the party. Those who survived the process, or by defection avoided the first round of retribution would remain easy targets for every wave of revolutionary violence in the movements to come.

### *Military Collaboration in Shandong*

After the establishment of a new Nationalist Government of the Republic of China in 1940 under Wang Jingwei, a growing mix of Chinese soldiers, bandits, and militias fighting with the Japanese military were claimed to constitute a national army for the new regime. In reality, these units bore dozens of different titles and served hundreds of largely independent commanders. Though some were directly recruited and eventually commanded by graduates of military academies established during the occupation, the majority were not created under Japanese military or Nanjing sponsorship. These forces were often units that had been encircled, captured, or that had defected to

the Japanese, often abandoning a proclaimed loyalty to Chiang Kai-shek's Nationalist army. The Japanese military referred to these as the "surrendered units" (歸順部隊). To the resisting Nationalists and the Communists, all of the Chinese armies under Japanese command were collectively known as the "puppet armies" (偽軍).<sup>4</sup>

I will continue to employ the widely used term puppet armies here, without scare quotes, despite its derogatory and political nature. The term does accurately reflect the degree to which these diverse forces were dependent upon Japanese tolerance, supplies, and occasional financial sponsorship to survive. The term falls somewhat short, however, in accounting for their changeable loyalties. They did not blindly serve any master but actively sought to retain or expand their power within the limiting parameters of a tactical alliance with the Imperial Japanese Army. When this proved stifling or dangerous, they were often content to switch sides whenever the opportunity presented itself. As Liu Hsi-ming has argued in a detailed study of the puppet armies, these soldiers were "pawns vacillating among hegemonic powers," who chose their own preservation over the presiding ideological or nationalist causes of the day.<sup>5</sup>

The regional character of these forces is important. The puppet armies were closely tied to, and operated for the most part within, narrow local boundaries. Units that operated in the Yangzi valley in relative proximity to the Nanjing capital may have conducted themselves as parts of a national army under the Wang Jingwei regime. In northern China, the multiple layers of political and military power that emerged out of years of Japanese encroachment made for an especially complex

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<sup>4</sup> Baba Takeshi has written an essay giving an overview of the puppet armies of Shandong province, some of their estimated numbers, and Japanese policies towards them. Baba Takeshi 馬場毅, 山東省の傀儡軍について [On the Puppet Armies of Shandong Province] *Shakai Kagaku Tōken* 39, no. 3 (March 1994): 843–872.

<sup>5</sup> Liu Ximing 劉熙明, 偽軍：強權競逐下の卒子, (1937-1949) [Puppet Armies: Pawns in a Power Struggle, 1937-1949], 49 (Taipei, Daixian Chubanshe, 2002), 2.

environment. Japanese military influence stretched back to the Manchurian incident of 1931, and well beyond that to the years of Japanese presence along the South Manchurian Railroad. In addition to its sponsorship of a new Manchurian nation in the northeast, in the early 1930s the Japanese military cultivated a number of local autonomous political bodies to fragment Nationalist control including the Hebei-Chahar Political Council and the East Hebei Autonomous Council. The Japanese military and its intelligence operatives also developed relationships with local military commanders and semi-independent warlords, including the powerful Yan Xishan of Shanxi.

These efforts were not always unified in purpose or in approach. Japanese policies in northern China reflected the competing visions of the occupation of the various Japanese forces taking part. This was especially true after 1937 when the conflict expanded. The Manchuria based Kwantung army, the North China Army and the Central China Army all jockeyed for influence in planning.<sup>6</sup> Until the defection of Wang Jingwei provided the Japanese with a compliant Nationalist party leader of unquestioned stature, a collaborationist government in the north under Wang Kemin, supported by the North China Army, competed for legitimacy with that of a regime in the south with sponsorship of the Central China Army.<sup>7</sup> These appointments and changes had only limited bearing on the ground however. Under occupation, provincial governments operated more or less autonomously under officials either reconfirmed in their pre-war positions or appointed with the blessing of the Japanese military. Similarly, at the level of local districts throughout North China,

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<sup>6</sup> Lincoln Li *The Japanese Army in North China 1937-1941: Problems of Political and Economic Control* (London: Oxford University Press, 1975), 76.

<sup>7</sup> For more on the Reformed Government in central China, see Timothy Brook, "The Creation of the Reformed Government in Central China, 1938" in David P. Barrett, ed., *Chinese Collaboration with Japan, 1932-1945: The Limits of Accommodation* (Stanford, Calif: Stanford University Press, 2000), 79-101.

local collaborators approved for membership on Committees of Public Safety operated in coordination with local Japanese units.<sup>8</sup>

The Japanese military was reluctant at first to allow its collaborators to raise an armed force beyond a few local police and personal bodyguards. Part of this fear grew out of the revolt of forces belonging to the ostensibly pro-Japanese East Hebei Army in Tongzhou in late July, 1937. Official support for the creation of a national Chinese army that was capable of working with the Japanese military came while the battle for the large city of Wuhan raged in the summer of 1938.<sup>9</sup> In northern China, a military academy was established at Tongzhou in May, and some recruitment and direct training was carried out. The North China Army referred to these soldiers as the Peace Preservation Corps (治安隊) while in Chinese it sometimes went by the name North China Pacification Army (華北綏靖軍). By October, 1940 this new army, which was to become the nucleus of a new national military, had been granted responsibility for security in two counties of Shandong and ten counties of Hebei province.<sup>10</sup>

The Peace Preservation Corps was given the greatest proportion of training and supplies but the North China Army placed greater confidence in another collection of more local forces: provincial and county level garrisons (警備隊). By 1940, Shandong province had 4,000 provincial level garrison forces and there were a reported 72,000 at the county level throughout occupied territory in the north; a reported average of 200 per county.<sup>11</sup> As we shall see, Communist enemy work teams found these local garrisons to be, by far, the easiest to win over, but a 1940 Japanese

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<sup>8</sup> Li, *Japanese Army in North China*, 82.

<sup>9</sup> Liu, 偽軍, 16-17.

<sup>10</sup> Japanese Defense Agency 防衛研修所, 北支の治安戦 [The War of Pacification in North China], 2 vols. (Tôkyô: Asagumo Shinbunsha, 1968) vol. 1, 483.

<sup>11</sup> 北支の治安戦, vol. 1, 484.

report on their development was strangely optimistic. Aiming to eventually have 300 in every county in northern China, the fact that these forces were locally recruited was assumed to ensure that they would take an active role in preventing infiltration by resistance guerrillas.<sup>12</sup>

Unfortunately, this tidy picture of the structure of collaborationist forces composed of local garrisons and a nascent national army rapidly breaks down. The Peace Preservation Corps (治安軍) could be found operating in areas with other peace preservation units (保安隊) of various scales. The new national army is sometimes referred to as the “Peace and National Salvation Army,” (和平救國軍) but elsewhere we find armies going by variations such as the “Peace and national construction army” (和平面建國軍) and “Peace and Communist Extermination Army” (和平剿共軍). Its other local title, the North China Pacification Army made it one of many other units supporting Japanese operations that included “pacification” (綏靖) in their title that may have had no direct connection to it. The Japanese military apparently attached the name “Communist Extermination Army” to stronger units within the Peace Preservation Corps, but some of the large and small units found in accounts of the war in northern China went by similar terms, including the similar “Communist Annihilation and National Construction Army” (滅共建國軍), and may have arrived at their name separately.<sup>13</sup> The title “Assist the Emperor Army” (皇協軍), also found throughout contemporary sources, was apparently attached by the Japanese to surrendered Chinese forces that were of a particularly poor quality. These units were to be temporarily supplied while being reorganized or demobilized.<sup>14</sup> At Japanese surrender, over a dozen units including this title were operating in

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<sup>12</sup> 北支の治安戦, vol. 1, 485.

<sup>13</sup> 北支の治安戦, vol. 2, 71.

<sup>14</sup> Ibid.

Shandong alone. These included five divisions operating in the plains of northwestern Shandong under the title “Assist the Emperor and Protect the People Army” (皇協護民軍).<sup>15</sup>

In the end, it is futile to reconstruct any sense of organization on these armies, nor did their unity improve significantly with time. Quite the opposite is true, especially in the aftermath of Japanese mopping-up campaigns in northern China in 1941 and 1942. During this time, the strongest and most active of the puppet armies to fight for Japan came into being from a growing number of surrenders of units of Nationalist forces, former bandits or small scale warlords. These units ranged in size from a few dozen to over 20,000, and Communist guerrillas simply referred to them by the names of their most important commanders, many of whom were well-known military figures in the districts and provinces they operated in.

Shandong offers a particularly rich environment to examine the response to these various forms of military collaboration with Japan. The province occupies the peninsula southeast of Beiping (now Beijing) and includes the important ports of Qingdao, Yantai (Chefoo) and Weihaiwei (now Weihai). The Japanese North China Army completed the conquest of its major urban and strategic targets in the province by mid-1938. During the occupation, the province was garrisoned by the Japanese 12th Army and the most important military units to carry out operations in the province at various points in the war were the 17th, 21st, 32nd, 35th, and 59th divisions along with the 5th, 6th, and 7th mixed brigades. By the spring of 1945, almost all of the Shandong countryside had been abandoned to Communist control. Only the Japanese 59th division and the three mixed brigades remained in control of the cities and a dwindling number of strongpoints near the main lines of communication.<sup>16</sup> After surrender, Communists claimed control over 92% of the land area.<sup>17</sup>

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<sup>15</sup> 北支の治安戦 vol. 2,71. The army was commanded by Liu Peichen,

<sup>16</sup> In the summer the 59th division was transferred out as well to face the Soviet invasion of the Korean peninsula.

**Table 7.1: Administered Population in Liberated, Occupied and Contested Zones, 1943 and the First Half of 1945<sup>18</sup>**

	<b>Liberated</b>		<b>Contested</b>		<b>Occupied</b>	
	<b>1943</b>	<b>1945</b>	<b>1943</b>	<b>1945</b>	<b>1943</b>	<b>1945</b>
Binhai	2,120 (43%)	3,481 (71%)	934 (20%)	705 (14%)	1,839 (37%)	407 (15%)
Lunan	1,245(30%)	2,921 (70%)	1,041 (25%)	668 (16%)	1,888 (45%)	584 (14%)
Luzhong	1,130 (19%)	4,564 (70%)	3,330 (56%)	1,051(17%)	1,487 (25%)	891 (13%)
Jiaodong	1,707(20%)	5,508 (64%)	1,195 (14%)	1,205 (14%)	5,633 (66%)	1,893 (22%)
Bohai	2,275 (31%)	4,355 (58%)	1,615 (22%)	826 (11%)	3,449 (47%)	2,328 (31%)
<b>Total</b>	<b>8,477 (27%)</b>	<b>20,829 (66%)</b>	<b>8,114 (27%)</b>	<b>4,454 (14%)</b>	<b>14,295 (46%)</b>	<b>6,403 (20%)</b>
<b>Land</b>	<b>185 (31%)</b>	<b>403 (68%)</b>	<b>168 (29%)</b>	<b>77 (13%)</b>	<b>240 (40%)</b>	<b>113 (19%)</b>

Note: Units in thousands. It is unclear which category includes those areas under Nationalist control but by 1943, these would have been relatively small in total area and population.

The peninsula offers a wartime setting which combined characteristics of a number of other regions. It has both rich agricultural areas with terrain that was relatively easy for the Japanese to operate in, large cities with significant foreign populations, as well as rugged mountain districts ideal for guerrilla activity. The Yimeng mountains in central Shandong southeast of the provincial capital of Jinan and those of the Jiaodong peninsula to the east became particularly important for the resistance. These mountains became the two primary centers of Communist guerrilla activity in Shandong while the western rim of the province fell under the responsibility of a separate Communist military district called the Shanxi-Hebei-Shandong-Henan border region. Communist

<sup>17</sup> “山東省歷年面積村莊人口統計表” [Statistical tables of the yearly population, villages, and area of Shandong Province] Shandong shehui kexueyuan lishi yanjiusuo 山東社會科學院歷史研究所, ed., 山東革命歷史檔案資料選編 [A Selection of Archive Materials on the History of the Revolution in Shandong Province] (Jinan: Shandong renmin chubanshe, 1982) vol. 16, 413. Hereafter SGLDZX.

<sup>18</sup> “山東省歷年面積村莊人口統計表” 406-411.

organizational efforts in Shandong began with a series of uprisings throughout the province in 1938 in which the Party played a leading or important part. The resulting patchwork of Communist-led groups only gradually united as sub-districts of a Shandong Base Area. Party control in this new base area centered on a Shandong Provincial Sub-bureau while the various local military units united under a “Shandong Column” (山東縱隊). The Column later merged with the more professional 115th Division of the famous 8th Route Army, which made its way into Shandong in the spring of 1939.<sup>19</sup>

As of 1939 the Communist resistance rarely sought out confrontations with the Japanese occupation forces. The Shandong Sub-bureau, under Zhu Rui, focused on building up its strength and working towards centralization. Instead, Communist soldiers in the province lost more casualties in battles with the hundreds of thousands of Nationalist forces that stayed behind in Shandong than with the invading Japanese.<sup>20</sup> It was the dwindling units of these Nationalist forces and their own locally recruited Nationalist guerrillas that would, in large part, defect to the Japanese. These included forces under the overall command of Qin Qirong, Yu Xuezhong and former Qingdao mayor Shen Honglie.<sup>21</sup> The most rapid growth of puppet armies in Shandong occurred between 1940 and 1943 when they grew in number from an estimated 80,000 to 180,000.<sup>22</sup> This coincides with the highly destructive mopping-up campaigns carried out by the Japanese 12th Army in 1941 and 1942 that nearly succeeded in destroying the headquarters of the Shandong Base Area and encircle the main

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<sup>19</sup> For a discussion of the tensions between the two, see Sherman Xiaogang Lai. *A Springboard to Victory: Shandong Province and Chinese Communist Military and Financial Strength, 1937-1945* (Leiden; Boston: Brill, 2011), 112-3.

<sup>20</sup> David Paulson “War and Revolution in North China: The Shandong Base Area, 1937-1945” (PhD diss., U of year), 95.

<sup>21</sup> On the background of Nationalist weaknesses in the province, see Sherman Lai *Springboard to Victory*, 125-128.

<sup>22</sup> Zhongguo xiandai shi ziliao congkan 中國現代史資料叢刊 抗日戰爭時期解放區概況 [Overview of the the Liberated Areas during the War of Resistance Against Japan] (Beijing: Renmin Chubanshe, 1953), 90.



body of both the Shandong Column and the 115th Division. While Communist forces were able to rebuild, Nationalist forces caught in these campaigns were not as effective in restoring their strength and often switched sides to retain their arms and organization. By 1943 most of the Nationalist forces that had not switched to Japanese allegiance withdrew from the province, or disintegrated under Communist attacks.

Even as its puppet armies exploded in size, the Japanese capacity to deploy its own forces in strength declined. In 1942 and at a growing pace thereafter, Japanese strength in many areas of occupied China was increasingly sapped to meet the needs of its expanded conquests in Southeast Asia and the Pacific.<sup>23</sup> As the Imperial Army's expansion within China slowed, it was more important than ever to consolidate control in its rear without the costly concentration of large numbers of its own forces for mopping-up campaigns. Also, it was equally important to quickly garrison areas that were newly deemed to have been purged of resistance forces. The new puppet armies played a key role in achieving both of these goals: they helped the Japanese carry out their brutal counter-insurgency campaigns, and as each district was cleared, assumed garrison duties.

None of the puppet armies were as well equipped and often far more poorly trained than Japan's Imperial Army. Even optimistic Japanese reports on their performance always prefaced their hopes for the future with the observation that in their current form they were not of sufficient quality to be trusted to carry out operations without Japanese assistance.<sup>24</sup> More training was needed, it was argued, and more time for them to become accustomed to the challenging work of mopping-up guerrillas.<sup>25</sup> Despite their weakness, however, they did free up Japanese soldiers to operate elsewhere.

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<sup>23</sup> The exception to this is the concentration of Japanese forces to carry out the large-scale 1944 Ichigō campaign but the success of this campaign hinged on a further degrading of the Japanese position in rear areas in northern China.

<sup>24</sup> Accounts from Shandong, however, frequently mention battles involving hundreds or even thousands of puppet troops without any mention of a Japanese presence.

<sup>25</sup> 北支の治安戦 vol. 2, 71.

Even before their explosive growth in numbers began, the ratio of puppet soldiers to Japanese soldiers in 1940 was three to one in Shandong.<sup>26</sup> By the following summer they were garrisoning an estimated 800 forts or strongpoints throughout the province.<sup>27</sup> Even in one of the areas with high concentrations of Japanese forces, the Jiaodong peninsula, a Communist intelligence survey from 1944 listed 87 strongpoints occupied by the Japanese (with a total of 8,364 soldiers) and 156 strategic points manned by 21,879 puppet soldiers.<sup>28</sup>

The puppet armies were most reviled for their violent repression and pillage, as we shall see examples of shortly, but even without these excesses, they were also significant in terms of the raw financial burden they placed on the communities surrounding them. Their forces added a further level of resource extraction in the form of taxes that, depending on the district, could overlap with that of the Japanese, Nationalist guerrillas still engaged in resistance, and Communist forces. In December, 1942, the Shandong Sub-bureau produced a remarkably detailed economic report on the relative financial burden of various occupation forces on village life.<sup>29</sup> This report combined studies focused on several villages under various circumstances, as well as a focus on a few individual families and claimed that districts under puppet control had a financial burden more than three times that of districts under Japanese control. The overall compiled averages from the studies were summarized as follows.

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<sup>26</sup> “戰鬥中的山東人民” [The People of Shandong in the Battle] *SGLDZX* vol. 5, 127.

<sup>27</sup> “緊急動員起來為建設堅持鞏固的山東民主抗日根據地而鬥爭” [Urgently Mobilize for the Construction and Consolidation of the Shandong People’s Resistance Base Area and the Struggle] *SGLDZX* vol. 7, 137.

<sup>28</sup> “膠東敵偽軍調查研究材料” [Materials on the investigation and study of Enemy and Puppets in Jiaodong] (1944) SZ G050-01-0011-003.

<sup>29</sup> “從敵偽頑我區人民負擔的調查中看到的幾個問題” [Several Problems That Can be Seen From a Survey of the Burdens on the People in Enemy, Puppet, Stubborn, and Our Own Districts] *SGLDZX*, vol. 9, 175.

**Table 7.2: Monthly financial burden by district type, 1942<sup>30</sup>**

District	Per Person	Per <i>mu</i> of land	GMD %	Puppets %	Japanese %	CCP %
Guerrilla Zone	128[.]38 yuan	49[.]39 yuan	48%	25%	16%	7%
GMD District	98.66	22.5	69.7%	20.3%		
Puppet District	35[.]2	13.2		96.1%		3.9%
Japanese District	9.32	10.36			83.9%	16.5%
CCP Base Area	3.17	2[.]57				

Note: Percentages do not include amount paid for public village funds. The missing decimal points are added based on additional calculations supplied in the description which followed the table. GMD districts are those controlled by Nationalist guerrillas or regular army troops.

These amounts were not, for the most part, collected in cash, and these estimates are based on the converted value of the various agricultural products and raw materials appropriated. The resources and taxes extracted in districts controlled by Nationalist forces was far higher than those in puppet districts. These numbers do not, however, quantify the labor *corvée* which, the report claimed, was most severe in puppet and Japanese controlled districts.<sup>31</sup> The most contested areas unsurprisingly placed a particularly large cumulative burden on its inhabitants due to extractions by all parties.<sup>32</sup>

These puppet armies had a reputation for cowardice and incompetence in battle, but it would not be accurate to suggest that they merely sat behind the safety of their fort walls, emerging only for the occasional plunder or tax collection. They are mentioned in almost all accounts of wartime battles involving Communist guerrillas and until the weakened state of the Japanese occupation emboldened them, were the primary target of many guerrilla attacks. Statistics for body counts in Communist battle reports were undoubtedly widely exaggerated, but even if they claimed double or more, they

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<sup>30</sup> Ibid., 182.

<sup>31</sup> Ibid., 180.

<sup>32</sup> The report recommended in its conclusion that the Party reduce its extraction of resources in contested guerrilla zones. Ibid., 183.

suggest that thousands of Chinese puppet soldiers were dying in battles with Communist forces of Shandong alone, at a rate that equal and sometimes higher than for Japanese casualties.

**Table 7.3: Shandong Sub-Bureau Battle Results for January, 1938 to April, 1940 and July, 1940 to April, 1941<sup>33</sup>**

	Japanese Killed	Japanese Wounded	Puppet Army Killed	Puppet Army Wounded
<b>1938.1-1940.4</b>	12,051	7,023	11,971	10,241
<b>1940.7-1941.4</b>	2,084	2,378	2,625	2,118

Behind the front lines where Chiang Kai-shek's battered forces held off further Japanese advances, the Sino-Japanese war was as much a conflict in which Chinese fought and killed their own fellow Chinese as one in which the "Japanese devil" played the most visible villain. This fact is usually pointed out in order to emphasize the bloody nature of a conflict between the Communists and Nationalists as their Second United Front collapsed. The costs in casualties from this civil war were already significant in Shandong long before the New Fourth Army Incident of 1941 brought the severity of the break between the two parties out into the open.<sup>34</sup> However, the scale of Chinese on Chinese violence during the war is no less impressive if all Communist battles with "stubborn army" (頑軍, the Nationalist forces) units that still proclaimed the cause of resistance are excluded. Surrendered Nationalist forces dominated many of the puppet armies, but this designation overplays the attachment these surrendered forces had to the ruling Nationalist party, an ideological anti-Communism, or for that matter, a Chinese nation. The war between the puppet armies and their mostly Communist adversaries simply cannot be seen as a continuation of a great contest for

<sup>33</sup> “第八路軍山東縱隊抗戰二年來戰鬥統計表” [Statistical Table of Battles In the Past Two Years of the Shandong Column of the Eighth Route Army] *SGLDZX* vol. 4, 263. “四期正軍的總結於五期正軍的方針任務” [The Policy for Carrying Out the Fifth Period of Rectification of the Army and Summary of the Fourth Period of the Rectification of the Army] *SGLDZX* vol. 7, 58.

<sup>34</sup> The New Fourth Army incident involved a series of clashes between Communist and Nationalist forces in Anhui province, culminating in the near destruction of the New Fourth Army in early January, 1941.

supremacy between two well-formed political adversaries, with the weaker Nationalist armies taking a “crooked path to national salvation” (曲線救國) by surrendering to the Japanese. This is not because Communist propaganda was wrong about the pragmatic, if treasonous, intentions on the Nationalist side, but because it imagines a degree of central control and selfless sacrifice to a national purpose which does not fit most of Chiang Kai-shek’s “National Revolutionary Army” in the 1930s.

In Shandong, a July 1945 Communist report estimated that puppet soldiers had reached 200,000 in number, and that 80% of these were former Nationalist soldiers.<sup>35</sup> Time was quickly running out for them. On 14 August, the day before Japan’s official surrender, the Shandong Sub-bureau political commissioner Luo Ronghuan ordered that all puppet armies and puppet employees who did not immediately surrender to Communist resistance forces be eliminated. Attached to the order was a long list of prominent members of the Japanese supported provincial government and puppet armies in the province.<sup>36</sup> The list contained 57 military units and their commanders (See Appendix C). Some 37 of these, or 65%, also added a note with the original Nationalist army unit they belonged to before surrender. Not mentioned in the note, however, was how recent these Nationalist army designations themselves often were, or which local warlord, bandit group, or secret society had once claimed their obedience. Most of all, what is missing from statistics and lists of this kind, and their use in postwar Communist propaganda focusing upon the connections between the puppet armies and the Nationalists, is how “crooked” the path truly was for many of these forces. To better understand this complex picture and to anchor an examination of wartime and early postwar Communist policies towards the puppet armies in Shandong, let us use

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<sup>35</sup> “一年來山東的對敵政治攻勢” [The Political Offensive Against the Enemy in Shandong Over the Past Year] *SGLDZX* vol 15, 119.

<sup>36</sup> “山東各級偽政權及部隊” [Puppet Governments and Units of Various Levels in Shandong] *SGLDZX* vol. 15, 207-211. See also Appendix C.

the example of one location, the district and later county of Laiwu, and separately, one among the many puppet army commanders operating in Shandong, Wu Huawen.

### *The Puppet Armies of Laiwu*

Laiwu county lies tucked in a valley just east of Taishan, one of the most celebrated mountains in China. Part of the Luzhong area and variously designated as a district or county by its various wartime governments, Laiwu is surrounded on three sides by mountains but located only a mere 110 kilometers southeast of the provincial capital Jinan. Laiwu was overshadowed by the prominence of the nearby town of Tai'an and its famous mountain, but was an important producer of coal and valued for its yellow and white silk production.<sup>37</sup> To the north, a mountain pass connected it to the city of Zichuan on the JiaoJi railway, the artery connecting Jinan with the port of Qingdao. To the west beyond Tai'an lay the important north-south JinPu railway from Tianjin to Pukou, just outside of Nanjing. The district had the misfortune of being located in the shadow of the mountainous districts that were home to many Communist forces, but also close enough to be easily accessible by Japanese forces and their allies.

Laiwu offers a setting where a number of the differing forms of military collaboration with Japan can be found as well as the interaction between puppet armies, Nationalists, Communist forces, and other armed groups. Japanese forces entered the county on 1 January, 1938. Only two days later, local Communist party and other armed locals rose up in revolt and within a week had joined forces with other revolts in nearby Tai'an and the town of Xintai. Japanese troops continued their progress south in February without leaving a garrison, but no sooner had they left than Nationalist guerrillas under Qin Qirong entered the district and fought a series of battles with the local Communist-led

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<sup>37</sup> Alexander Armstrong, *Shantung (China): a General Outline of the Geography and History of the Province; a Sketch of Its Missions; and Notes of a Journey to the Tomb of Confucius* (Shanghai: Shanghai Mercury, 1891), 60.

resistance. A semblance of a “united front” between Communists and Nationalists was only restored with help from the Nationalist 69th Corps commander, the former warlord Shi Yousan, who helped local Communist forces expel his supposed ally Qin from the district.<sup>38</sup>

In August, 1939, a resistance government was formally established for Laiwu in the southeastern mountain village of Zhujiazhuang under Communist Party member and guerrilla leader Tan Keping. A county magistrate appointed by the Nationalist forces in 1940, the avowed anti-Communist Liu Boge, also claimed to represent the county. Finally, the Japanese army, which had reestablished some presence in the county by late 1938, strengthened its grip on the county beginning in September, 1940 by building up local strong points and recruiting military collaborators from the area. There were now three contending centers of power, a Communist led county government in Zhujiazhuang, Liu Boge’s Nationalist county government, and a Japanese supported county administration.

Almost as soon as it had established local strongpoints, the Japanese Army carried out its first major mopping-up operation in the county. Communist sources claim that some 360 civilians were killed in 25 separate Japanese massacres during this campaign. By 1943, however, the Japanese sponsored county government was deeply infiltrated by Communists. Some of the county administrators were in fact Communist Party members who had sought out their positions under the Japanese following a policy of “white skin, red heart” (白皮紅心).<sup>39</sup> As a result, much of the county remained effectively under Communist Party control until the end of the war, even as puppet armies

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<sup>38</sup> Shi Yousan was later assassinated by a subordinate when he tried to defect to the Japanese in 1940.

<sup>39</sup> “抗日戰爭時期的萊蕪” [Laiwu During the War of Resistance Against Japan] (18 April, 2007) 萊蕪新聞網 [Laiwu News Web] <http://www.laiwunews.cn/html/2007/0418/37109.html> (Accessed 14 June, 2012) For more on this policy see Sheng Zhang 張生, 日偽關係史：以華東地區為中心 [A History of Relations Between Japan and the Puppets: Focusing on the Northeast Area] (Nanjing: Nanjing Chubanshe, 2003), 285-295.

and Japanese troops continued to occupy strong points in the county seat of Laicheng and a few other locations such as Kouzhen and Luxi villages.

This triangular distribution of power in the county between Communist, Nationalist, and Japanese-sponsored administrations, can be found in many Japanese-occupied areas in northern China, but the simplification is only possible by subsuming a number of other armed groups under either the Japanese or Nationalist corner of the triangle, or else classifying them as apolitical bandits. Doing so underplays the independence and strength of local actors that may have shifted allegiance several times during the conflict. Religious sects and rural self-defense associations were, for example, important players.

Four or five distinct armed groups in Laiwu eventually fought together with Japanese occupation forces and they ranged in size and the breadth of their support in the communities they came from. A county level security battalion and a county garrison are referred to in a number of sources, but it is not clear if these were separate organizations. The former is described as mostly made up of soldiers who were not from the county, and were of poor quality. One of these units deserted in 1943. In 1945 many of them retreated into Anhui province, while those that remained revolted on behalf of Communist forces and attacked the Japanese supported county government. A “Revive Asia and Eliminate Communism Army” (興亞剿共軍) was also established, headed by a local bandit named Yan Jiguang and an “intellectual,” Liu Yaonan as his second in command. Its other officers were said to include local merchants, and was alleged to operate an intelligence network in the county that depended on its traders, but the whole army was merged into the county controlled



security battalion in 1942.<sup>40</sup> The security battalion, local garrison, and Yan's bandit army are unlikely to have had much broad support.

The more formidable, and dangerous, of the puppet armies in Laiwu came from organizations that predated the war and could command stronger loyalties from its thousands of members across multiple villages in the county. In the mountainous east of Laiwu, an "Eliminate Communism Autonomous Army" (剿共自治軍) operated under the command of one Zhang Wenzheng.<sup>41</sup> Zhang was the "great teacher" and leader of the local branch of the "Middle Way" (中央道) religious sect, which was active in over 20 counties of Shandong. There are two versions of how the followers of the Middle Way in Laiwu. Communist sources, some of which were used to suppress the sect in the early 1950s, claims that around 1,800 followers of Zhang fought on behalf of the resistance with a Nationalist commander operating further south, Zhang Liyuan, but that they later transferred to the control of two important commanders who eventually surrendered to the Japanese, Zhang Buyun and Wu Huawen. By the time the army of the Middle Way had joined Wu Huawen's forces, most likely when he was stationed in Laiwu, they had dwindled to some 500 men and were of little use. Their leader Zhang Wenzheng was killed by Communist forces in 1945.<sup>42</sup>

A 1947 Nationalist report on puppet armies in Laiwu tells the story of the Middle Way somewhat differently. It claimed that early in the war against Japan, the Middle Way followers first fought in league with local Communist forces but, following disagreements, they were expelled from the county and surrendered to the Japanese in 1941. They then returned to Laiwu and grew in

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<sup>40</sup> 萊蕪縣偽軍史資料 [Materials on the history of the puppet army in Laiwu county] (June, 1947) SZ J108-01-0090-002

<sup>41</sup> Ibid.

<sup>42</sup> Yao Lu 路遙, 山東民間秘密教門 [Secret Religious Societies of the People of Shandong] (Beijing: Dang dai Zhongguo chu ban she, 2000), 279-80.

strength to about 3,000 rifles with Japanese support. The Middle Way then turned upon their former allies and were responsible for the capture and killing of hundreds of members of the “treasonous Party” (the Nationalist term for the Communist Party). Part of their army was dispersed by the Japanese in 1942 on suspicion of working secretly with the resistance, while the remainder was wiped out by Communist forces in 1946, after Japanese surrender.<sup>43</sup>

The Middle Way was not the only organization of its kind in Laiwu that may have changed sides when its allies proved worse than its enemies. One of the best known wartime organizations in Laiwu was the army of the “Hard Fist Society” (硬拳道), which was connected to the Red Spears (紅槍會) movement. This organization, also with a strong religious element, was one of many in a complex world of rural defense associations and religious societies found throughout Shandong and northern China. The Hard Fist society was, like other Red Spear societies, led by local elites, but had wide community participation. It grew rapidly in the 1920s in Shandong, where the “Hard Fist Society” resisted warlord and bandit violence and appropriations in rural areas. Both Nationalist and Communist sources agree this time that the Laiwu based Hard Fist Society began the war in alliance with the Communist-led revolt. They were predominantly active in western Laiwu, especially around the village of Luxi where they worked together with the resistance movement until late 1939. It was then that the relationship fell apart, thanks to the “leftist deviations” of the Communist Traitor Elimination Bureau (鋤奸部).

The year 1939 was already a bad one for Treason Elimination Bureau agents who, at this point, focused more on rooting out Party heterodoxy than exposing enemy spies and punishing collaborators. These were as often as not simply referred to as traitors, or traitors to the Han people, *hanjian* (漢奸). By the end of the year, the provincial Party Sub-Bureau was reeling from that news

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<sup>43</sup> 萊蕪縣偽軍史資料 (June, 1947) SZ J108-01-0090-002.

that over 300 executions of accused Trotskyists had been carried out by bureau agents in southern Shandong during the widely condemned witch-hunt that became known as the “Huxi Incident.”<sup>44</sup> In Laiwu, the Hard Fist Society became the target of the Bureau. Treason elimination cadres executed two of the society’s leaders and beat other prominent figures in the organization. Suspicion and factional strife broke out and the head of the society, Qi Xiangde, fled the county and went over to the Japanese in September, 1940. Qi was just in time to help the Japanese in their new efforts to strengthen control in Laiwu and, with their support, he returned to gather his followers and create around half a dozen separate armed units.<sup>45</sup>

Until the Hard Fist Society retreated into Anhui province as the Japanese surrender neared, they were a menace to both Communist and Nationalist forces in Laiwu. Communist sources claim that they included around 1,000 armed followers, while the 1947 Nationalist government report claims that they had 7,000 followers of which 2,000 had firearms. The postwar Nationalist report claims they often carried out nighttime assassinations of resistance leaders and members of a Nationalist youth group. A Communist source claims the Hard Fist Society broke up 100 Party branches, coerced 600 party members to give themselves up to the Japanese, and killed around 400 members of the resistance.<sup>46</sup> After the war Qi and the Hard Fist Society’s remained in Laiwu in service of the returning Nationalists as an autonomous unit. When Qi’s unit was captured by Communists in 1947, he was executed for the society’s wartime crimes.

In Laiwu, there was no shortage of bandit figures or ragtag soldiers serving in the Japanese supported county garrison. In this county, however, the most serious threats from the puppet armies

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<sup>44</sup> Michael Robert Dutton, *Policing Chinese Politics: A History* (Durham, NC: Duke University Press, 2005), 100.

<sup>45</sup> Zhang Zhengjie 張正杰 and Chen Gang 陳剛 萊蕪硬拳道 [The Hard Fist Society of Laiwu] 萊蕪文史資料 [Laiwu Historical Materials] v1 169-171. See also He Shanqing 何善慶 萊蕪的硬拳道 Ibid. vol. 3, 98-100.

<sup>46</sup> Zhang 萊蕪硬拳道.

supporting the Japanese occupation came in the form of local institutions with local ambitions for power and a reason to carry out violence in the name of vengeance. Communist Party propaganda deployed a patriotic rhetoric describing a national problem of puppetry: armies filled with deceived and drafted farmers, of heartless bandits, and of urban ruffians who were betraying their country through ignorance, desperation, or a propensity for cruelty. In places like Laiwu, however, local Communist Party resistance forces faced circumstances that came nowhere near to fitting this picture and its Enemy Work Bureau, tasked with winning them over to the resistance, adapted accordingly.

*Wu Huawen's Crooked Road to National Salvation*

Laiwu offers a look at how important the particular circumstances of a locality is in understanding the challenges faced by the resistance, whether it was Communist or Nationalist in its leadership, in tackling the phenomenon of military collaboration. Sometimes, however, the personality and ambitions of a single commander could be as important a factor as the complex workings of county society. In both Nationalist and Communist accounts of the wartime years in Shandong province it is the remarkable personalities and terrifying deeds of the leading warlords which stand out. They include the Shandong bandit Liu Guitang, who had already earned infamy fighting and pillaging as far afield as inner Mongolia before returning to his home province to fight under both Nationalist and Japanese orders. He was killed in 1943 at the hand of local communist forces and his body was paraded around the communities who bore a deep hatred of him.<sup>47</sup> There was Zhang Buyun, a general who served under the commander of nationalist forces in Shandong Han Fuju until Han was executed by Chiang Kai-shek for refusing to follow orders to halt the Japanese

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<sup>47</sup> See Nils Graefe, *Liu Guitang (1892-1943): Einer Der Grössten Banditen Der Chinesischen Republikzeit* (Wiesbaden: Harrassowitz Verlag, 2008). The relationship with the Communist was not always antagonistic. See Sherman Lai, *Springboard to Victory*, 178.

advance into the province. Zhang became one of the first major commanders to surrender to the invading army and remained active in Japanese service even at the end of the war. He is remembered in Shandong for a number of brutal massacres carried out during mop up operations in the spring of 1945. A more complex figure was Zhang Tianzuo, the former police chief of Changle county who discovered a way to simultaneously hold military commissions from both the Nationalist army and the Japanese through an act of mutual deception. Undoubtedly, however the most unique figure of them all was Zhang Zongyuan. Born in 1892 as Date Junnosuke in Japan, Zhang took on Chinese citizenship in 1931. He called himself a *Luren* (鲁人), a person from Shandong, and fought for a wide variety of causes, including independence for his beloved Shandong. When Japan occupied the province, Zhang assumed the titular head of many of its puppet armies.

One of the commanders whose forces had a relatively wide field of action in Shandong and had frequent occasion to clash with the Communist Shandong Column and the Eighth Route Army's 115th Division is Wu Huawen. When Japanese forces flowed into Shandong in 1937, Wu was a subordinate of Han Fujun, the Nationalist commander executed for his unwillingness to defend the province.<sup>48</sup> For years thereafter he continued to serve the Nationalist forces who remained behind in the province as part of the Civilian Intelligence Guerrillas commanded by Qin Qirong, who we saw fighting with the Communist resistance in Laiwu. Wu commanded tens of thousands of soldiers in a New Fourth Division that was one of the largest and strongest cohesive units among the Nationalist forces in the province. Together with Qin Qirong and Shen Honglie, he was one of the core leaders of provincial Nationalist power to remain behind during the occupation. The relative freedom with which a large Nationalist division under Wu could move across Shandong province without major battles with the Japanese is an example of the extremely porous nature of Japanese control in the

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<sup>48</sup> For more on Wu Huawen's background see Liu Hsi-ming, *Weijun* 296-307.

large province. In 1938 Wu served under Shen in southwestern Shandong but late in the year moved to the north of the province, before being relocated to southern Shandong again the following year and eventually focusing his operations around the Yimeng mountains that encircled Laiwu district.

In August, 1940 the forces of Wu Huawen and Shen Honglie launched multiple attacks on a detachment of the Communist Shandong Column around Lucun, just east of Laiwu. Each time the attacks came as the Japanese were launching their own attacks on the detachment. Events such as these led to accusations that Wu Huawen and Shen were coordinating their actions against Communist forces with the Japanese. This may well have been the case, but what could seem to one side as insidious cooperation could, to another, be seen as attacks of opportunity based on intelligence. When Nationalist forces came under strong pressure from Japanese and puppet army attacks in later years, the 115th Division enthusiastically finished the job by eliminating most of the remnants of the attacks.

If the suspicious timing of Wu's attacks on Shandong Column had already earned him a reputation for betraying the cause of resistance and anti-Communist fervor, his reputation grew even worse by the following year in the area around Zichuan, just beyond the northern pass out of Laiwu. There, the atrocities of Wu's soldiers earned his army the nickname "Fresh Corpses" (xīnsǐshī 新死屍) in a play on the name "New Fourth Division" (xīnsìshī 新四師). By mid-1942, Communist reports noted that Wu's forces were confiscating ever larger amounts of materials from the local populace, which they took to mean that he was running low on supplies.<sup>49</sup> After a two day battle between Communist units and Wu's forces in late 1942, it was noted that the New Fourth Division had grown markedly weaker when compared to earlier attacks. Squeezed between the Japanese and

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<sup>49</sup> Details of this were found in a rich series of diary entries in work entitled 解放淄博 [The Liberation of Zibo] available online through the Zibo city archive (淄博市資料館). I have not been able to determine the original publication it was scanned from. The 1942 entries are found at <http://www.zbda.gov.cn/data/sws/016/0160004/003/001.pdf> (Accessed 3 June, 2011)

Communist forces in the mountainous areas, the very survival of his army as an independent force was in question.

In January, 1943 Wu Huawen turned his fortunes around and defected to the Japanese. His New Fourth Division was reorganized and Wu was placed in command of a Third Army of Peace and National Construction. He almost immediately launched attacks on his former allies, in the form of the Nationalist forces under the commander Yu Xuezhong. Wu's defection had a powerful impact on Nationalist fortunes in Shandong, forcing its provincial government and most of its remaining organized resistance to withdraw from the province.<sup>50</sup>

Beyond the impact of Wu's defection on Nationalist military and political presence, his armies reputation for atrocities and causing devastation increased. In February, 1943 Wu Huawen's division moved into the district of Linqu, over the mountain northeast of Laiwu. In his wartime diary, Feng Yizhi, then sub-commander of a local regiment of the 115th Division stationed in the area, claims the district was laid to waste when Wu moved in, transforming it into a "no-man's land" (無人區) as the refugees flowed out of the district or starved. Feng's unit moved in to provide relief in the aftermath but found only abandoned villages and a few "wandering ghosts" along the road. Feng claimed he had never seen such devastation up to this point. Between the dead and those who had fled, only ten households remained out of around a hundred in the village he set up his base and his unit had to bury the bodies of the dead themselves. Those that survived blamed Wu.

Merely bringing up the name of Wu Huawen brings forth both grief and hatred. They say he is not a human but a demon. He brought upon the people unprecedented disaster. What made their hate even more impossible to placate was the fact that not only did he cause so much damage but had also surrendered to the enemy and become a traitor. Gnashing their teeth they said, "If Wu Huawen was captured, covered with oil and lit on fire, it still could not purge our hatred."<sup>51</sup>

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<sup>50</sup> On the impact of Wu Huawen's defection see Sherman Lai, *Springboard to Victory*, 165-6.

<sup>51</sup> 解放淄博 (1943 entries, 244-5) <http://www.zbda.gov.cn/data/sws/016/0160004/004/001.pdf> (Accessed 4 June, 2011)

Laiwu also remembers Wu Huawen for the atrocities of his armies. For part of 1944, Wu was based in eastern Laiwu and it was forces under his command that was responsible for the “Xujiadian Massacre,” the single largest massacre of civilians to occur in the district during the war. One of Wu’s battalions, commanded by Ma Zhengyuan, were attacked by Communist forces. After the attack they surrounded the two nearby villages of Xujiadian and Xiachen to carry out retribution. They were set alight and the inhabitants attacked indiscriminately. According to a local gazetteer, those killed included an eight year old girl thrown in the fire, an eleven year old beaten to death, and others shot, stabbed, or thrown into the village well. Altogether 34 villagers were killed and 21 injured, over five hundred homes burned, and the crops in the field, leading to starvation and another 35 dead within a year.<sup>52</sup>

Wu was always able to escape the oil and fire his victims might have wished for him. His forces grew to be the strongest unit among the puppet armies in Shandong by 1944.<sup>53</sup> By the end of the war, however, he had lost more than half of his strength in three “Attack Wu Campaigns” launched by the Communist 115th or to defections and desertions.<sup>54</sup> Along with many other puppet armies, he withdrew out of the province to the south in the summer of 1945.

Despite his prominent role in crushing the remnants of Nationalist strength in the province, Wu was welcomed back by Chiang Kai-shek in 1945 and his forces were reorganized, leaving him in command. Wu was unhappy with the terms and supplies given to him, and at least one returning

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<sup>52</sup> “日偽軍罪行” [Crimes of the Japanese and Puppets] 萊蕪市志 [Laiwu City Gazetteer] in SSZ <http://sd.infobase.gov.cn/bin/mse.exe?K=bc&A=1&rec=220&run=13> (Accessed July 1, 2012) One troubling aspect of using the rich and searchable online version of these gazetteer documents is that the online gazetteer does not indicate which edition of the printed version its contents is taken from, or whether the digital contents has been updated since.

<sup>53</sup> Liu, 偽軍, 299.

<sup>54</sup> Ibid., 302.



Nationalist general in Shandong, Li Yannian, wanted Wu tried as a traitor.<sup>55</sup> His ability to avoid prosecution may have been thanks to secret assistance he provided to the nationalist Nationalist intelligence organization, the Military Statistics bureau, or *juntong* (軍統) in the last months of the war. At the treason trial of Zhou Fohai (周佛海), one of the top three leaders of the Japanese wartime client regime established in Nanjing, a *juntong* officer Zhou Gao (周鎬) testified that he had secured the defection of Wu Huawen, and several other leading puppet officers in the fall of 1944.<sup>56</sup>

From 1946-1948 Wu hedged his bets and developed contacts with the Communist forces that occupied most of Shandong province. When his forces in the provincial capital of Jinan, which was virtually surrounded for much of the civil war, came under attack in the fall 1948, Wu immediately defected to his Communist attackers with his men, making any further defense of the city impossible. Nationalist control in Shandong collapsed with this act of betrayal and an American marine presence in Qingdao was all that kept that last Shandong city safe until the following year.

Both Mao Zedong and Zhu De congratulated Wu for his timely defection in a telegram after the fall of Jinan and Wu was allowed to continue to command his own men, though likely under the strong influence of his appointed political commissar, He Kexi. Wu's reorganized army immediately joined the sweep south during the final stage of the civil war. New battles fought with the revolutionary army provided a means of repentance for past sins. The reverse of this phenomenon

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<sup>55</sup> Ibid., 303.

<sup>56</sup> Nanjingshi Dang'anguan 南京市檔案館, ed. 審訊汪偽漢奸筆錄 [Record of the Trials of the Wang Puppet [Regime] Traitors], 2 vols. (Nanjing: Fenghuan chubanshe, 2004), 155. Zhou Gao's own story shows once again the complex world of betrayal all this took place in. He was a confidant of Dai Li, the head of *juntong* until his death in 1945 and was head of the *juntong* station in Nanjing at the time of the trial. However, by the time he testified at Zhou Fohai's trial where he also testified to Zhou Fohai's cooperation with *juntong* and embarrassed the Nationalist party, Zhou had allegedly already secretly joined the Communist party and would soon be under arrest himself. Whether his claims about Zhou Fohai, Wu Huawen and other puppet commander relations with *juntong* were true is thus complicated by his potential other loyalties at the time. See Guo Biqiang 郭必強 周佛海身邊的軍統少將 [The *Juntong* General at Zhou Fohai's Side] in Jiangsusheng Zhengxie Wenshi Ziliao Weiyuan Hui 江蘇省政協文史資料委員會 ed. 江蘇文史資料 [Jiangsu Historical Materials] (Nanjing: Jiangsu Wenshi Ziliao bian ji bu, 1995) vol. 29, 304-332.

was seen only a decade earlier when thousands of Spaniards with left-wing pasts cleaned their slate by fighting for the Nationalists in the late stages of the Spanish civil war.<sup>57</sup>

When soldiers raised the red flag on the roof of the Nationalist government headquarters in Nanjing in 1949, a famous scene reminiscent of the Soviet capture of the Reichstag in Berlin in 1945, it was soldiers in Wu's 35th Army who carried it out. By this time, however, it was no longer the warlord's personal army and had absorbed thousands of other troops. The unit that captured the capital building had fought against Wu during the war of resistance in the Communist 115th Division, only to later find themselves nominally under his command and fighting side by side with Wu's old troops in the 35th Army's 104th Division.

The defections of Wu Huawen were not unique, nor was the fate of his soldiers in the vanguard of the southern advance of the Communists. If anything, his transfers of loyalty, the violence and devastation caused by his forces, and the Communist approach to this forces are found repeated in the experience of many puppet armies in Shandong. As we shall see, beyond Wu's many twists of fortune and the dramatic impact of his 1948 defection, his forces were the active targets of the Communist policy towards puppet armies. Its best known victory might have been at the walls of a besieged Jinan during the civil war, but just as important were the more piecemeal efforts to win over Wu's forces in towns and fortresses across the province during the long war of resistance against Japan. The approaches to this effort varied, but the fundamental principal behind this effort begin with Mao Zedong himself.

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<sup>57</sup> James Matthews "'Our Red Soldiers': The Nationalist Army's Management of Its Left-Wing Conscripts in the Spanish Civil War 1936-9." *Journal of Contemporary History* 45, no. 2 (April 1, 2010): 352-3. Matthews suggests those with left-wing pasts volunteered early in Nationalist territories for fear of retaliation for their political pasts.

*Puppet Army Policy and the Seven Captures of Meng Huo*

In a letter to his New Fourth Army commander Chen Yi and its political commissar Liu Shaoqi on 17 August, 1941, Mao answered their request for an official Communist policy towards puppet troops fighting for the Japanese. The party should, he said, patiently follow the policy of ‘seven times capturing Meng Huo.’<sup>58</sup> Four chapters of the Romance of the Three Kingdoms are dedicated to the story of how the brilliant strategist Zhuge Liang suppressed a rebellion in the south of the kingdom Shu, in modern day Sichuan province.<sup>59</sup> The rebellion was sparked and sustained by the forces of the Man tribe under their king Meng Huo. After defeating the Man in battle Zhuge captured the fleeing king in an ambush. When asked what he would do if he was released, Meng said he would raise his troops to fight again, but if captured a second time he would submit. Zhuge released Meng Huo despite the protests of his commanders. To these Zhuge replied, “I can catch him again with ease whenever I choose to. But the pacification of the south requires that we subdue the hearts of the Man people.”<sup>60</sup> In the chapters that followed, Man was captured time and again, but five times he reneged on his promise to submit to the Shu and end the rebellion. Finally, on his seventh capture, Meng Huo and his family swore the south would not rebel again, “For generations to come, our children and theirs after them will gratefully acknowledge your all-protecting, all-sustaining love, deep as Heaven, vast as earth.”<sup>61</sup>

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<sup>58</sup> “Our Policies Toward the Puppet Troops and Our Views About the Treatment of the Puppet Officers and Soldiers” (17 Aug, 1941) in Mao Zedong, Stuart R. Schram ed., *Mao’s Road to Power: Revolutionary Writings 1912-1949* (Armonk, N.Y: M.E. Sharpe, 1992) vol. 7, 796-7. Hereafter *Road to Power*

<sup>59</sup> Chapters 87-90. Luo Guanzhong, *Three Kingdoms*, trans. Moss Roberts (Changsha: Hunan Ren min chu ban she: Wai wen chu ban she, 2000), vol. 4, 2117-2217.

<sup>60</sup> Ibid., 2141.

<sup>61</sup> Ibid., 2215.

This most likely apocryphal story of Meng Huo's repeated capture is mentioned in several sources but found in most detail in the influential Three Kingdoms romance.<sup>62</sup> Though the four character compound 'seven times capturing Meng Huo' (七擒孟獲) has been interpreted in more abstract terms since. There is nothing to suggest Mao was thinking of the old anecdote the saying came from when he used it in 1941, but the parallel between the old story and his proposed policy is striking:

In principal, whether they are officers or soldiers and no matter what social background they come from, no puppet troop captives are to be killed. Even those elements who have a deep hatred for us and come back to fight us again after being released may be spared execution. That is, the method of repeated capturing and releasing is better than killing, and its impact is greater. In releasing captives, there should be absolutely no posting of bail, and they should not be made to vow that they will never be puppet soldiers in the future. But they can be required to swear that they will not really help the Japanese oppose the New Fourth Army in the future. And if they do actually violate their oath and help Japan fight us, then we should still patiently carry out the policy of "seven times capturing Meng Huo."<sup>63</sup>

This position had evolved over the course of the opening years of the war against Japan. Mao's own directives emphasized the importance of the task of "winning over and disintegrating" (爭取瓦解) puppet armies at least as early as his "On the New Stage" report to the Sixth Plenum of the Central Committee of the Chinese Communist Party in October, 1938.<sup>64</sup> In November, he directed that political subversion of puppet regime troops seek to maximize the long-term impact on the enemy. When puppet troops were won over cadres were to "strive to bring them nominally under

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<sup>62</sup> Kimberly Ann Besio and Constantine Tung, *Three Kingdoms and Chinese Culture* (SUNY Press, 2007), 56-57.

<sup>63</sup> "Our Policies Toward the Puppet Troops and Our Views About the Treatment of the Puppet Officers and Soldiers" *Road to Power* vol. 7, 796.

<sup>64</sup> "On the New Stage: The New Stage in the Development of the National War of Resistance Against Japan and the Anti-Japanese National United Front" (12-14 Oct, 1938) *Road to Power*, vol. 6, 486

the command of the Eighth Route Army, and then transform or reorganize them during a process of struggle...”<sup>65</sup>

In late 1940 Mao offered more specific instructions on releasing captured puppets. At this point, however, while the basic policy was to “set them all free,” he allowed for the execution of military collaborators that had “incurred the bitter hatred to the masses.”<sup>66</sup> By May, 1941, the policy had come to settle upon the Meng Huo inspired policy of extreme leniency. In a directive to forces the Shaanxi-Ganzu-Ningxia border region cadres were even ordered to forgo attempts to force those captured to show repentance and removed the possibility of retribution against those guilty of particularly heinous crimes. As in the case of his instructions to the New Fourth Army, in the cases of both captured enemy and puppet army soldiers, commanders were to, “carry out a policy of leniency in all cases, regardless of the individual’s situation...under no circumstances may they be killed, humiliated, forced to confess, or forced to compose statements of repentance. Those who are recaptured after having been released, regardless how many times they have been captured, are all to be dealt with in this manner.”<sup>67</sup>

The other important figure in establishing policies towards puppet forces was the head of the Eighth Route Army, Zhu De. He had a long military career before becoming a close associate of Mao Zedong in 1928 and was no stranger to military defections. As a graduate of the Yunnan military academy, he betrayed his own Qing army to participate in the Yunnan army revolt in October, 1911. Already during this earlier revolution he used subversion to persuade other Qing soldiers to defect to

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<sup>65</sup> “Persist in Long-Term Guerrilla Warfare in the Daqing Mountains” (24 Nov, 1938) *Road to Power* vol. 6, 561.

<sup>66</sup> “Directive of the Central Committee of the Chinese Communist Party on Policy in the Current Situation” (25 Dec, 1940) *Road to Power* vol. 6, 601.

<sup>67</sup> “The Administrative Program in the Shaanxi-Gansu-Ningxia Border Region” (1 May, 1941) *Road to Power*, vol 7, 730.

the Republican forces.<sup>68</sup> Again in 1916, while serving the Yunnan warlord Cai E during the National Protection War, Zhu helped secure the defection of thousands of Sichuan troops to join the cause of Cai's National Protection Army (護國軍).<sup>69</sup> As a commander of ostensibly Nationalist troops in 1927, Zhu supported a Communist military insurrection in Nanchang before again briefly integrating his troops into those of the warlord and Nationalist commander Fan Shisheng. While Mao had looked to the *Three Kingdoms* for inspiration, Zhu could simply look back upon his own career.

In his 1938 essay "On Anti-Japanese Guerrilla War" Zhu De discussed the importance of political warfare against military collaborators. Many of the rank and file and some of the officers among both the Japanese and their collaborators were "unwilling to die for the Japanese conquest of China." Political tactics, therefore, should be used to compel the puppets to "turn their guns against the Japanese warlords and the Chinese traitors."<sup>70</sup> In a later essay from April, 1945, Zhu took a more flexible approach than the unconditional mercy Mao proposed and suggested that a diverse range of approaches be taken, urging cadres not to, "apply one hard and fast rule to all puppet troops." While the diehards were to be destroyed, officers and men who were only "temporarily fooled" by the enemy should be won over. They were to be warned, however, that time was running out. "These puppets have committed many crimes. Unless they cross over to our side soon, they will not have time to serve their country and redeem themselves; and they will be punished as the nation

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<sup>68</sup> Matthew William Russell, "From Imperial Soldier to Communist General: The Early Career of Zhu De and His Influence on the Formation of the Chinese Red Army" (Ph.D., History, District of Columbia: The George Washington University, 2009), 187.

<sup>69</sup> Ibid., 287. The National Protection War was a rebellion involving several provinces. It was sparked by opposition to president Yuan Shikai, who had declared himself emperor in 1915.

<sup>70</sup> "On Anti-Japanese Guerrilla War" (1938) Zhu De, *Selected Works of Zhu De*, 1st ed. (Beijing: Foreign Languages Press: Distributed by China International Book Trading Corp. (Guoji Shudian), 1986), 52.

demands.”<sup>71</sup> The puppets would have to, as British commanders claimed the Burma National Army did in the spring of 1945, “work their passage home” by joining the war of resistance.

### *The Enemy and Puppet Work Bureau in Shandong*

The general policies set out by Mao and Zhu for dealing with puppets were tasked to an Enemy and Puppet Work Bureau (敵偽工作部). In Shandong, a 1940 guide outlined the goals for developing the Bureau in the base area.<sup>72</sup> The task was urgent, it was argued, given the large number of points puppet armies already occupied and the fact that there were three times as many puppet soldiers as Japanese ones in the province. Separate Enemy and Work Committees were to be set up for each provincial-level administrative division (行政區), commissioner’s administrative region (專員區, the equivalent of the older provincial “circuits” or *dao* 道 system used by the collaborationist government), and the county (*xian* 縣) levels.

These committees were to consist of five members, including a committee head, one staff assistant, one propaganda specialist, one intelligence officer, and one cadre dedicated to operations. The intelligence officer was to focus on collecting information about “internal contradictions” among enemy and puppet forces as well as capture documents that could be of use to the efforts of winning them over. Operations officers were to focus on the creation and management of relationships with puppet army units and agents that had infiltrated their ranks.

Enemy and Puppet Work Committees did not only work with puppet armies, but also with Japanese and Korean soldiers in the Imperial army. It took advantage of a small number of cadres

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<sup>71</sup> “The Battle Front in the Liberated Areas” (25 April, 1945) Zhu De *Selected Works*, 181.

<sup>72</sup> “怎麼開展地方敵偽軍工作” [How to Develop Regional Enemy and Puppet Work] (Aug., 1940) *SGLDZX* vol. 5, 320-327.

who had studied in Japan or had otherwise gained Japanese language experience. Japanese and Koreans who defected to the Communists joined anti-war leagues that continued propaganda efforts against the Japanese occupation. These efforts did not yield the results achieved with Chinese puppet armies. Defections among the Japanese were extremely low in number, and even limited relationships with Chinese military collaborators could yield significant intelligence and other benefits that were less likely to be gained from the occupying army. In Shandong, the Enemy Work Bureau did have higher hopes, however, for their work with Korean soldiers. When there was an influx of Korean volunteer recruits (志願兵) into the Japanese 32nd and 59th divisions in the spring of 1944, it was hoped that these Koreans retained sufficient “national or ethnic consciousness” (民族意識) to make them susceptible to overtures from the resistance.<sup>73</sup> Captured Koreans were to be separated from Japanese prisoners and treated according to the lenient policy for puppet armies, with the exception of those captured as spies.<sup>74</sup>

Throughout the war, and even before Mao and Zhu clarified the Party’s policy, the official approach in Shandong was already one of leniency.<sup>75</sup> Puppet soldiers were not to be insulted or criticized. They were not to be searched, and they were to be offered preferential medical treatment.

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<sup>73</sup> 關於對敵鬥爭問題 [On the Problem of the Struggle Against the Enemy] (1943?) *SGLDZX* vol., 12, 34. See also “一年來山東對敵政治攻勢” [The Political Offensive on the Enemy in Shandong Over the Past Year] (21 July, 1945) *SGLDZX* vol., 15, 123 and “中共山東分局對敵鬥爭委員會關於山東半年來對敵鬥爭工作的檢討與今後工作意見” [An Evaluation by the Shandong Branch of the Communist Party Enemy Struggle Committee on the Enemy work carried out in Shandong Over the Past Year and Views on Work Going Forward] (16 Nov., 1942) *SGLDZX* vol., 9, 134.

<sup>74</sup> “山東省有待朝鮮人民暫行條例” [Temporary Regulations for the Treatment of Koreans in Shandong Province] (3 May, 1943) *SGLDZX* vol. 9, 63.

<sup>75</sup> What was true in Shandong may not have held for other areas where Communist led guerrillas were active. Despite following similar policies and finding recognizable patterns in the broad sweep of political and military campaigns, it is important to recognize the considerable local variation in various areas held by Communist forces. Even limiting the discussion to Shandong, this chapter does not do full justice to the occasional divergences between Communist forces operating near the Yimeng mountains and the rest of central Shandong, and those in the hills of the Jiaodong peninsula.



Weapons were to be confiscated, and while they were to receive political education, those that requested to return home were to be released, escorted to the district border, and given travel funds.<sup>76</sup> The importance of the policy on the peninsula grew after Communist controlled areas came under heavy attack in the most ambitious mopping up campaigns by the Japanese in 1941.<sup>77</sup> This already lenient policy had become even more generous by the summer of 1945, even as Japanese surrender neared. For those puppet armies that surrendered or secretly aided the resistance, cadres were to offer “the three guarantees”: “1) to be treated as allies in the war against resistance and not be disarmed; 2) to be given a unit designation in the army of resistance and not be disbanded; 3) to be treated without discrimination and be permitted to further expand as they fought together in the war of resistance.”<sup>78</sup>

Cadres in the Enemy Work Bureau were instructed to first attempt to develop ties with officers of a puppet army unit, and if that did not work attempt a bottom up approach. Attempts to secretly infiltrate the lower ranks of puppet armies had been made throughout the war, but it was deemed an inefficient approach. Instead, Communist infiltrators in puppet units served primarily as liaisons with the Party and their identity was known to officers in the targeted unit.

When a relationship was developed with a puppet officer, they were classified either as “two-sided type” (兩面派) or “two-sided revolutionary type” (兩面革命派) puppets. The latter were seen as reluctant collaborators that were in fact patriotic supporters of the war of resistance that were additionally sympathetic to the revolution. Greater care was taken in working with the former, who

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<sup>76</sup> “怎麼開展地方敵偽軍工作” [How to Develop Regional Enemy and Puppet Military Work] (Aug., 1940) *SGLDZX* vol., 5, 326.

<sup>77</sup> On the renewed importance of the policy towards collaborators at this point see Sherman Lai *Springboard to Victory*, 136-7.

<sup>78</sup> “中共山東分局，山東軍區政治部關於大股偽軍工作經驗的初步整理” [Shandong Branch Communist Party Shandong Military District Political Department Preliminary Overview of Experiences with Large Scale Puppet Work] (April, 1945) *SGLDZX* vol., 14, 343. “山東軍區處理偽軍偽警條例” [Regulations for Dealing With Puppet Soldiers and Puppet Police in the Shandong Military District] (Aug. 20, 1945) *SGLDZX* vol.15, 267.

were seen as having a reactionary character who were merely acting out of self-interest. For these, an effective mix of the carrot and the stick was to be used combining attacks on their forces with efforts to secure their cooperation. “As you beat them, seduce them; as you draw them in, beat them; beat them and draw them in again and again. When you beat them don’t beat them so hard that you destroy the relationship. As you draw them in, don’t lose your own position.”<sup>79</sup>

Cadres of the bureau were encouraged to be generous in the giving of gifts in order to gain the friendship and trust of a puppet army as long as they did not offer them opium, flour, or prostitutes. When drawing a puppet army unit in, cadres were not to set their goals too high. It was not necessary to secure the defection of all puppet armies. Instead, getting them to remain neutral, passive, and relatively inactive was itself a success.<sup>80</sup> Even in cases where a targeted unit was willing to come over, it was not always permitted. It was recommended that a unit only come over if they were found out by the Japanese, they were soon to be reorganized or merged into another unit, or they were deployed in an assault. The full defection of a unit was to be avoided when it contained a large number of bandit elements that would be difficult to manage, or when it was deemed difficult for the Party to establish control over the territory they were responsible for.<sup>81</sup>

We can see how the carrot and stick approach was supposed to work in the memoirs of Wang Fang, head of the Enemy Work Bureau in the Luzhong military district that included Laiwu and the areas where Wu Huawen was active. Wang targeted one of Wu’s battalions that had been involved in raids in Mengyin and Boshan, which lay just to the south and north of Laiwu, respectively. The force had about 500 men and was commanded by a former bandit named Liu Mingjiu well known, according to Wang, for his propensity for opium, prostitutes, pillage, and killing. Liu’s men were

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<sup>79</sup> “關於對敵鬥爭問題”[On the Problem of the Struggle Against the Enemy] (1943) *SGLDZX* vol. 12, 114.

<sup>80</sup> *Ibid.*, 98

<sup>81</sup> *Ibid.*, 113

deeply loyal to him, however, and he claimed to follow a code of honor. It was decided that, despite his past violence, the Bureau would “light a fire in his backyard” and then let him come over to the Eighth Route Army.

Wang travelled to Liu’s fortress together with a company of soldiers. Leaving his men disbursed around the fortress, he approached the gate dressed in a captured uniform together with a Japanese speaking interpreter, and was let into the fortress. He then revealed himself as an agent of the resistance and demanded the surrender of the fortress, declaring it to be surrounded. The commander offered his hospitality and together the two feasted and attempted to out-drink each other. Commander Liu was informed by his own men that an unknown number of soldiers did indeed surround his fortress and Wang combined threats of imminent destruction with appeals to the virtues of joining the resistance over the course of two days of debate. In the end Liu surrendered with all his men and the story of Wang’s successful use of deception and persuasion spread spread Wang’s reputation throughout the district. In a formal ceremony, Liu’s unit was given a new designation as an independent battalion in the resistance army, and Liu was allowed to remain as second in command of his own troops.<sup>82</sup>

How much of this story, which echoes so many similar stories of daring deception found in Chinese military tales, is true is difficult to determine, but Wang offers a sad ending to his tale. The old bandit Liu “could not handle our discipline” and his “old disease flared up again.” Liu and his soldiers deserted the resistance to collaborate once again with the Japanese. He was later captured, shot, and his unit disbanded.<sup>83</sup> Puppet armies that were captured and requested release might be captured again without facing execution, but unlike the Nationalist government, the Communist

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<sup>82</sup> Fang Wang 王芳, 王芳回憶錄 [The Memoir of Wang Fang] (Hangzhou: Zhejiang ren min chu ban she, 2006), 69-72.

<sup>83</sup> Ibid., 72.

Party was far less forgiving of those who once joined the Eighth Route Army's forces and then betrayed its ranks. Treason against the nation—at least under its Nationalist government—and service of the Japanese was one thing, but to betray the Party was another. Though the Communist Party sought to win over Chinese puppet soldiers and Koreans alike through an appeal to “national consciousness,” a new life in the Communist-led resistance was to be a one way street.

*Megaphones and Frontline Propaganda*

Don't shoot,  
Listen to me sing the surrender song.  
Brothers, listen carefully [repeat]  
We are all Chinese,  
One! Don't hate. Two! Don't hate.  
Why do you fight your own people? [repeat]  
The Japanese devils have come to our home,  
Who wants to serve as their beasts of burden?  
If you want to be a soldier you should kill the enemy. [repeat]  
The wild warlords act beyond the bounds of reason,  
and turn their guns upon themselves.  
If you want to be a soldier fight the Japanese,  
Recover our lost territory and enjoy peace.  
“The Surrender Song” from Laiwu District<sup>84</sup>

One of the most direct ways to win over puppet armies was through frontline propaganda. This could, of course, come in the form of written appeals. In Qinghe, Binhai, and Jiaodong military districts alone Communist forces distributed 160,000 copies of 52 different propaganda items to puppet armies.<sup>85</sup> During the three campaigns against Wu Huawen letters were sent to his officers pleading with them to come over. “Wu Huawen’s wild ambition forced you to become traitors,” one began, “We welcome you to return to our side. Together we can fight the war of resistance and

<sup>84</sup> “抗日歌謠選” [Collection of Ballads from the War of Resistance] 萊蕪文史資料 vol. 4, 118.

<sup>85</sup> “開展政治攻勢” [Launching the Political Offensive] SSZ  
<http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=17&rec=292&run=13>

eliminate the great traitor who cheated you: Wu Huawen.”<sup>86</sup> Because many of the soldiers in puppet armies were illiterate, however written propaganda had its limits.<sup>87</sup>

The most effective frontline communication with an enemy force that Communist forces had no direct or indirect relationship with was through the use of nighttime calls through a megaphone (喊話). Hiding in various locations around a puppet army strong point, these propaganda calls, songs, and chants that were carried out for hours at a time were used to demoralize the enemy through appeals to surrender, threats of future punishment, and the sharing of propaganda news on developments throughout Shandong.

An account of the application of megaphone propaganda against Wu Huawen’s forces can be found in Wang Fang’s memoir. In the winter of 1943, after the completion of the first “Attack Wu Campaign,” Wang personally joined an effort to secure the surrender of some Wu’s troops in a remote fortress. He called out to the enemy, telling them they could join the Eighth Route Army if they only put their weapons down, and that if, instead, they wished to return to their homes, the Eighth Route Army would gladly pay them their traveling expenses. After 30 minutes of these megaphone appeals, shots were fired from the fort, forcing him to relocate. Wang claims that, after another hour of calls from his new location, all 200 of the puppet soldiers inside surrendered.<sup>88</sup>

It wasn’t necessary for an enemy unit to surrender to claim a positive result. In Laiwu, an Enemy Work team under Yu Zizheng carried out megaphone propaganda against one puppet army fort. The fort did not surrender but a friendly relationship was successfully developed. When Japanese forces

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<sup>86</sup> “中共山東分局山東軍區政治部關於大股偽軍工作經驗的初步整理,” 338.

<sup>87</sup> 寡欲對敵鬥爭問題, 93.

<sup>88</sup> 王芳回憶錄, 68.

next carried out a mopping-up campaign in the area, local resistance members were allowed to hide in the fortress.<sup>89</sup> Megaphone propaganda, sometimes called offering “night school,” (上夜課), became an ever increasing part of efforts to win over puppet armies.<sup>90</sup> By 1944 they had also expanded to include more than just dedicated Enemy Work agents. In southern Shandong, the activity was apparently deemed safe enough a practice that children were given lessons on propaganda calls to the enemy and, “at night they would call out to the puppet armies not to steal their food.”<sup>91</sup>

Broadcasted or shouted propaganda along a long linear front cannot match the isolating effect these efforts must have had in wartime Shandong, or during the civil war after Japanese surrender, when these techniques continued to be used. Communist forces could move relatively freely and very often had their opponents completely surrounded. As the then young Japanese soldier Kuwajima Setsurō, stationed in western Jiaodong, admitted in his memoir, whatever claims there were on the military maps in Shandong, the areas under effective occupation by Japan and its allies in reality consisted only of each county seat and the next largest village. “Almost everything else was under Eighth Route Army control.”<sup>92</sup> When the voices calling for surrender or threatening retribution continued through the night on all sides of a fortification, it is not surprising the impact on morale was considerable.

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<sup>89</sup> Yu Zizheng 於子正 抗戰爭中的敵偽工作 [Enemy Work During the War of Resistance Against Japan] 萊蕪文史資料 vol. 3, 111.

<sup>90</sup> Of course, megaphone propaganda was also frequently used against Japanese troops as well, though to less effect. Regular soldiers of the 115th division were taught five to six Japanese sentences to shout to their enemy while Enemy Work agents were taught seven or eight sentences. 瓦解日軍 [Disintegration of the Japanese Army] SSZ <http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=17&rec=290&run=13> (Accessed June 3, 2012)

<sup>91</sup> “關於對敵鬥爭問題,” 93.

<sup>92</sup> Setsurō Kuwajima 桑島節郎, 華北戰記：中国にあったほんとうの戦争 [A Record of The War in North China: The Real War in China] (Tokyo: Asahi Shinbunsha, 1997), 39.

*The Registry of Good and Evil*

Enemy Work units targeting puppet armies showed great aptitude in combining the weapons of fear and shame. They also understood that one did not necessarily need to win over a treasonous soldier in a single eloquent appeal through a megaphone. Instead, indirect pressure built over time could eventually wear down an opponent. Nowhere is this better seen in the use of a “black and red point” (黑紅點) system to track the behavior of puppet soldiers. This practice, which was also referred to as the “Registry of Good and Evil” (善惡錄) or the “Book of Life and Death” (生死簿) contained a separate score sheet for each known puppet soldier.<sup>93</sup> In the Luzhong district, Wang Fang implemented the black and red point system for soldiers under Wu Huawen’s command.<sup>94</sup> Whenever a soldier was guilty of an atrocity, an act of pillage, or some other act detrimental to the cause of resistance, they would earn a black point. When they performed an act that aided the resistance, or demonstrated a virtuous character, they were to be awarded a red point. Until they defected to Communist control or the Japanese surrendered, military collaborators and enemy agents could earn a deficit of evil deeds large enough to earn them a death sentence, despite Mao’s directive that puppet soldiers were to be shown mercy regardless of their circumstances. When an enemy agent was executed, the announcement of the death was to be accompanied by a list of acts associated with their black point score, while any red points were to remain a secret.<sup>95</sup>

Besides determining guilt for a future trial—though I have found no reference in postwar trial descriptions that mention the score, the point system could only have a deterrent effect if the score

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<sup>93</sup> “關於對敵鬥爭問題,” 95.

<sup>94</sup> 王芳回憶錄, 66.

<sup>95</sup> Ibid.

could reach the puppet soldier it tracked. One way this was accomplished was by announcing the black and red point scores directly to the puppets during the nightly megaphone announcements. A more indirect but perhaps more effective way was to pass on updates to the score card not to the soldier, but to his family.

This indirect communication and pressure was achieved through the registration of puppet family members (偽屬登記). By 1944, Binhai military district reported the registration of 1,358 households with relatives in the puppet armies. In Luzhong, 1,295 households were registered and in Jiaodong, 1,895.<sup>96</sup> Registration, which was updated annually, was only the first step. Assemblies of puppet families were called to discuss the impact on the resistance of treasonous military collaboration and, more specifically, the behavior of local puppet soldiers with relatives at the assembly. 120 such meetings were held in Luzhong with over 700 participants. Enemy Work cadres were instructed that the black point crimes of puppet soldier relatives should be read out at the meetings without insult and in a matter-of-fact way. The names of those who committed the acts were not be read out in public. Instead, the families of the puppet soldiers were to be warned privately of the sins of each relative, such that they could bear their family shame in silence and apply pressure on their relatives to return home. Those that did return home were then asked to participate in the rallies and speak to the hardships they suffered as collaborators of the Japanese.<sup>97</sup>

### *Zhu De and The Prices of Betrayal*

Attempts to secure the defection of Chinese soldiers fighting alongside the Japanese by means of propaganda and by approaching family members in the villages required considerable time,

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<sup>96</sup> “關於對敵鬥爭問題” 95.

<sup>97</sup> Ibid.



manpower, and a patient process of wearing down the enemy. Establishing contacts directly with soldiers or junior officers and either appealing to their patriotic virtues or offering promises of protection against any future punishment was direct but dangerous. Perhaps the simplest method to turn the puppet soldiers away from their treasonous ways was to appeal to the same motivation which led many of them to fight for the Japanese in the first place: cold hard cash.

An example of the scale contemplated by Communist plans to supplement its political efforts with the outright purchase of puppet loyalty is found in a January 23, 1945 letter from Commander Zhu De to the U.S. head of the China Theater, General Albert Wedemeyer. "I have a favor that I wish to ask you," he began, and then requested a loan of \$20 million from the U.S. to use for the purpose of bribes for puppet armies.<sup>98</sup> The amount would be repaid, "following the victorious conclusion of the war against Japan." Given his earlier career, this pragmatic approach was entirely in keeping with the character of the pragmatic Communist leader of the wartime 8th Route Army, though none of Zhu De's main works on winning over enemies openly proposed bribes for puppets to switch their loyalty. On the contrary, Zhu argued that the Eighth Route Army and the

New Fourth Armies had an "inexhaustible supply of manpower" thanks to its ability to attract voluntary recruits inspired by a desire to resist Japanese aggression. Instead it was the Nationalists who used "buying," coercion, and deceit in its efforts to recruit soldiers.<sup>99</sup> In the January, 1945 letter to General Wedemeyer, however, Zhu suggested that bribery could easily double the number of defections among Japanese collaborator troops achieved by political means.

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<sup>98</sup> Chu Teh to Albert C. Wedemeyer (23 Jan, 1945) 893.00/2-2345, Confidential U.S. State Department Files China: Internal Affairs, 1945-1949 Reel 1 University Publications of America (Frederick, MD, 1985). This request from Zhu De is also mentioned briefly in Lifu Chen, *The Storm Clouds Clear Over China: The Memoir of Ch'en Li-fu, 1900-1993* (Hoover Press, 1994), 279, and Maochun Yu, *OSS in China: Prelude to Cold War* (Yale University Press, 1996), 195.

<sup>99</sup> "The Battle Front in the Liberated Areas" (25 April, 1945), *Zhu De Selected Works*, 166.

**Table 7.4: Zhu De's Statistics on Puppets Won-Over, January, 1945<sup>100</sup>**

Area	Men	Rifles	Machine Guns	Mortars	Field Pieces
Shandong	11,987	6,540	122	109	26
Shanxi-Hebei-Shandong-Henan	5,821	3,909	60	32	12
Shanxi-Suiyuan	932	550	8	10	3
Shanxi-Chahar-Hebei	1,024	620	13	11	1
Central China	14,075	8,314	134	121	18
Total	34,167	20,159	343	288	60

The approximately 34,167 puppets won-over up to this point, according to the letter, comprised around 3.8% of a total estimate of around 900,000 Chinese fighting on behalf of the Japanese. Zhu argued that political measures alone could probably bring this number up to about 5%. This percentage could be doubled, he argued optimistically, to 10%, or around 90,000, by using “financial” measures. In what can only be described as a proposed investment plan, Zhu outlined the accounting for his estimates. The requested \$20 million was to be divided into five parts.<sup>101</sup> \$7.6 million was to go towards administrative costs and operations, including the cost of intelligence and liaison work. \$1.4 million was to be paid directly to puppet officers ranging from squad commanders and up through platoon, company, battalion, regiment, and even the proposed bribery of ten puppet division commanders. Some 3,000 squad commanders were to be offered \$30 each, while division commanders were to be offered \$10,000. In addition to these one-time defection bonuses, this fund was to include post-defection awards to officers who were brought over by political measures and “comfort fees.” Third, almost a million dollars was to be set aside for bounties to puppets for bringing over various weapons ranging in value from rifles (\$20 each) to artillery (\$1,000), as well as valuable communications equipment. Radio sets, for example, were to be purchased at \$200 a piece. Fourth, almost five million dollars was put aside to pay puppets their original salaries for three months, for a

<sup>100</sup> Chu Teh to Albert C. Wedemeyer, 2.

<sup>101</sup> Ibid., 3-5.

supply of clothing and equipment, a fund for gifts, and subsidies for the families of the defected puppets. Finally, a reserve fund of five million was to be put towards using military collaborators for sabotage and demolition operations as well as special missions to assassinate Japanese officers.

It is possible that the letter merely represents one very elaborate attempt by Communists to secure large scale funding from the U.S. in a slightly more indirect manner, and that the funds were never intended to go fully towards bribing military collaborators. Zhu De's request came at a time when the newly arrived commander of U.S. forces in China was actively considering the possibility of arming and otherwise supporting Communist efforts in the war of resistance against Japan.<sup>102</sup> In the aftermath of the replacement of the controversial general Joseph Stilwell in late October, 1944, Zhu was taking advantage of a brief opportunity to establish an entirely new relationship with American forces.<sup>103</sup> In the months that followed there were a number of proposals and counter-proposals exchanged on cooperation between Nationalists and Communists, with General Patrick Hurley serving as intermediary. The process was complicated by other negotiations, unknown to Wedemeyer and Hurley at the time, between another U.S. General Robert McClure and the Communists that culminated in an offer to send thousands of American airborne troops to be stationed in Communist controlled territory. The final result of the complicated process was a warning by General Hurley to President Roosevelt that the offer of close military cooperation with the Communists was a dangerous development that threatened the preservation of the Nationalist regime. On 27 January, Chief of Staff George Marshall ordered that no negotiations were to continue that did not also involve Chiang Kai-shek's government. Three days later General Wedemeyer issued an order to all

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<sup>102</sup> William Donovan, of the American intelligence service, does appear to have taken Zhu De's request seriously, however. See Yu, *OSS in China*, 197.

<sup>103</sup> Charles F Romanus, *Time Runs Out in CBI, United States Army in World War II* (Washington: Office of the Chief of Military History, Dept. of the Army, 1959), 72.  
[http://www.history.army.mil/html/books/009/9-3/CMH\\_Pub\\_9-3.pdf](http://www.history.army.mil/html/books/009/9-3/CMH_Pub_9-3.pdf) (Accessed June 18, 2012)

officers in the China theater directing them refrain from “discussing hypothetical aid or employment of U.S. Resources to assist any effort of an unapproved political party, activity, or persons.”<sup>104</sup>

### *The Wartime Gains of the Bureau*

The cumulative efforts of the enemy and puppet work of the Communist party in Shandong were considerable, but fell far short of the ambitions of the party. An early 1945 estimate of the total number of puppet soldiers that had been won over in Shandong, based on incomplete statistics, was around 12,000.<sup>105</sup> This was despite the fact that in only the year preceding the report, some 45,000 captured puppet soldiers had been offered the opportunity while under detention. Some of these, it was claimed, had already been captured and released six or seven times, by which time even the rebellious Meng Huo of ancient times had mended his ways.

About half of those who were won over came from relatively small groups. These defections, often in the dozens or a few hundred, were frequently announced alongside those from other base areas around northern China in the Party’s Shandong mouthpiece, *Dazhong Ribao* (大眾日報).<sup>106</sup> Some 140 puppet army units with under 1,000 soldiers each had been won over with a total of around 6,000 rifles. Three units with more than 1,500 soldiers each, including some 6,500 rifles came over. These were the forces of the three major commanders to defect to Communist control in Shandong

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<sup>104</sup> Quoted in *ibid.*, 253. Memo for CG 14th USAF et al., 30 Jan 1945. Wedemeyer may never have seen Zhu De’s request, or at least, he did not take the use of puppet troops very seriously. When pressed on the issue of underutilizing puppet troops in China before the Senate Armed Services Committee, Wedemeyer was unable to say anything intelligent about them, except to recall vaguely that some had served the Japanese under a “general named Wang.” See the discussion on the Senate episode in John Hunter Boyle, *China and Japan at War, 1937-1945: The Politics of Collaboration* (Stanford University Press, 1972), 318.

<sup>105</sup> This was a number consistent with Zhu De’s estimate for Shandong supplied to the U.S. Military around the same time. By contrast, only 200 Koreans and Japanese had been won over. 15:123

<sup>106</sup> See for example 大眾日報 [The Masses Daily] 26 Oct., 1940, 2, 26 Nov. 1940, 2, 1 Jan., 1941, 2, 13 Feb., 1941, 2, 22 Feb., 1941, 2, 22 June, 1940, 2, 1 Nov., 1940, 22 March, 1941, 2, 7 April, 1941, 1, 10 April, 1941, 1, 16 June, 1941, 2, 4 Aug., 1941, 16 Sept., 1941. From late 1941, reports of defections of puppet soldiers can be found in at least one issue almost every week through to the end of the war.

during the Japanese occupation: Wang Dao, Mo Zhengmin, and Zhang Xixian.<sup>107</sup> The significant numbers these three defections alone brought over amply explains why, during the war, reports on the work of the Enemy and Puppet Bureau repeatedly lamented its failures to win over larger units. By July, 1945, the number won over had increased to 150 of the smaller units, but only one additional large unit had come over to the Communist with the defection of 1,800 soldiers under Han Shouchen in June, 1945. Despite this very late change of loyalty, Han remained in command of his forces. After the capture of Hangzhou in 1949, the former puppet army commander became the head the city's labor reform camp that would soon fill up with counterrevolutionaries who might have marveled at Han's impressive ability to avoid the fate of its inmates.<sup>108</sup>

If the total number of those puppet soldiers won over was indeed around 12,000, this is below the number of puppet soldiers who were claimed as kills up to 1941, let alone the likely far increased kills of later years, when the 115th division and local resistance forces grew more confident and moved to the offensive. Though they are even more likely to be susceptible to wild exaggeration, the cumulative reports of claimed puppet army kills in a selection of wartime chronologies of Shandong regional gazetteers are vastly higher, especially from local skirmishes listed for the summer of 1945 when Communist forces throughout Shandong aggressively attacked strongholds and towns occupied by puppet armies.<sup>109</sup>

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<sup>107</sup> Mo Zhengmin (1913-1983) went on to hold distinguished positions in the agricultural and chemical industry in northeastern China. Zhang Xian (1904-1961) went on to hold distinguished positions helping run the tobacco monopoly in Shandong and Shanghai. "Mo Zhengmin" SSZ <http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=84&rec=1791&run=13> (Accessed June 20, 2012) and "Zhang Xixian" SSZ <http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=84&rec=1205&run=13> (Accessed June 20, 2012)

<sup>108</sup> "Han Shouchen" SSZK <http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=84&rec=1247&run=13> (Accessed June 20, 2012) For more on the fate of counter revolutionaries in Hangzhou after 1949, see James Zheng Gao, *The Communist Takeover of Hangzhou: The Transformation of City and Cadre, 1949-1954*, (Honolulu: University of Hawai'i Press, 2004).

<sup>109</sup> One quickly arrives at impossible numbers when tabulating the body counts from just the battles of 1945 in this gazetteer collection of major events in Shandong "1912nian - 1949nian (Zhonghua minguo shiqi) da shiji (Major

It is likely that most of the remaining puppet soldiers, including those listed in Appendix C, were in part or whole integrated or reorganized as units in the Nationalist army. Some of these, as we saw in the case of Wu Huawen, would later turn to the Communists when the nationalist cause in Shandong was truly deemed lost by mid-1948. For the most part, however, when Nationalist forces returned to the province in 1945, beginning with the entry into the province of its new governor He Siyuan, they resumed control of only the small number of towns and strongholds that were still under Japanese and puppet army control. Puppet soldiers as well as Japanese soldiers were instructed to “maintain public order” until the central government could re-established control.



**Figure 2: The American marines are welcomed to Qingdao in October, 1945.** Above the cannons the text reads, “The merging of Japanese, puppets, and Chiang [Kai-shek’s] forces.”<sup>110</sup>

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events during the Republican period from 1912-1949) SSZ

<http://sd.infobase.gov.cn/bin/mse.exe?seachword=%u97E9%u5BFF%u81E3&K=a&A=2&rec=26&run=13> (Accessed June 20, 2012)

<sup>110</sup> From a selection of Communist propaganda posters from early postwar Shandong. US State Department Central Files China Internal Affairs 1945-1949 893.00B-11-2646.

Most Japanese soldiers were eventually disarmed and returned home, though some retained their arms to patrol the streets for months in major Chinese cities and in places such as Shanxi, continued to actively fight in the civil war. Communist propaganda of a “conspiracy” by Chiang Kai-shek to “merge” with the enemy and the puppets was not that far from the truth. The majority of former puppet soldiers in Shandong who were still operating as of August, 1945 would soon have the option of continuing to serve in the Nationalist army. If this was a conspiracy, however, it was one in which the Communists participated. If most puppet armies served the Nationalists after the war, it was not because Communists refused to absorb the forces of the occupation. During the crucial period of transition, however, the wartime gains by the Enemy and Puppet work bureau would come under threat.

### *Divided Responsibilities*

The key innovation of the Communist Party in dealing with military collaboration with Japan was that, up until Japanese surrender, its general policy was to isolate them from its mass campaigns and treat puppet soldiers as *neither* traitors nor as war criminal suspects, even if it portrayed them as such. In propaganda, in Party sponsored publications, and in postwar literature their violence and national betrayal was a regular topic of discussion. Threats made to puppet soldiers who the CCP tried to win over, and the red and black point system also, of course, primarily focused on the seriousness of the crimes they were guilty of. However, the Enemy and Puppet Work Bureau judged its success by the metric of loyalties won, not by criminals punished. Every puppet soldier executed for crimes committed against civilians or resistance forces could potentially frighten away an entire unit of his fellow soldiers. Until a new regime under the leadership of the Communist Party was strong and stable, those lost rifles and the lost fighting ability would not only denied the Party but

serve the Japanese or the Nationalist central government that sought its destruction. We already saw this threat become a reality in Laiwu when the Party alienated the followers of the Middle Way society and even more following its attack on the leadership of the Hard Fist Society.

In order to keep enemy and puppet work separate from the process of apprehending and punishing traitors and collaborators in general, the work of the bureau was kept explicitly distinct from the “traitor elimination work” (鋤奸工作) carried out by the Social Affairs Bureau and later the Public Security Bureau. A Shandong Party Sub-Bureau directive clarifying the relationship between enemy and puppet work and traitor elimination work ordered that, “No targeted individual may be handled by both.”<sup>111</sup> Its instructions on how to determine who should assume responsibility were not terribly helpful. Those who were to be won over, it explained, were to be handled by the enemy and puppet work groups, while traitors were to be handled by the traitor elimination cadres. Puppet soldiers generally but not always fell into the former category, something that is mostly confirmed by traitor elimination work reports up to 1945. For example, internal statistics on traitor elimination and police work in the Bohai district for 1944 lists 2,529 arrests in thirteen categories of crimes. Of these, 466 were executed. While there were many categories of treasonous behavior and other crimes listed, none of these listing puppet armies. As we shall see, this changed after Japanese surrender. The two largest groups executed were 181 enemy spies (敵探) and 103 bandits or thieves (盜匪).<sup>112</sup> The same report mentions elsewhere, however, that almost a hundred puppet soldiers had been won over in a discussion of its work with apprehended enemy agents, suggesting at least some flexibility in the divisions of labor. Another 1944 list of punishments meted out in almost 200 cases of treason

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<sup>111</sup> “中共山東分局關於敵偽工作組織領導的決定” [Resolution by the Shandong Sub-bureau Regarding the Leadership and Organization of Enemy and Puppet Work] (1 July, 1943) *SGLDZX* vol. 9, 529-30.

<sup>112</sup> “關於渤海區1944年公安鋤奸工作報告” [Report on Triator Elimination and Public Security Work for 1944 in the Bohai District] SZ G042-01-0198-001, 108.



elimination work in the Jiaodong area included one puppet police officer, who was released, but no other puppet soldiers.<sup>113</sup> Puppet soldiers do appear occasionally in traitor elimination statistics from earlier years, but they were very small in number.

Japanese surrender would bring a number of changes to this arrangement. As we saw earlier, on 14 August the Sub-bureau threatened liquidation to any puppets who did not immediately surrender. On 20 August, new “Shandong Military District Regulations for Handling Puppet Soldiers and Puppet Police” were issued.

1) For those that secretly helped the resistance or surrendered before Japan did so, the regulations confirmed the “three guarantees” that had been offered: not to be disarmed, not to be disbanded, and to be allowed to continue fighting.

2) Even those who had “caused relatively large damage to the resistance efforts but who gave in before Japanese surrender” were to be treated leniently.

3) Those who were under attack by Communist forces and finally gave in under direct military pressure were to have their units reorganized but given preferential treatment.

4) Those who gave up when Japan surrendered were to be given treatment according to the regulations for prisoners of war.<sup>114</sup>

5) Those who refused to surrender were to be liquidated and considered guilty as traitors.<sup>115</sup>

Soon enough, however, article five would lose some of its bite, and the work of combining threats with enticements was to resume. A 25 September directive ordered that the work of the enemy and puppet bureau was to continue but its form and approach would change.<sup>116</sup> Instead of focusing on the upper ranks of puppet soldiers in order to secure large-scale defections, the emphasis was to shift to primarily convert the lower ranks. Also, because the territory under Communist Party

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<sup>113</sup> “一二三月份公安鋤奸工作報告” [Report on Treason Elimination and Public Security Work for January, February and March] (1944) SZ G042-01-0009-001, 32.

<sup>114</sup> The committee for the management of prisoners of war was formed on the same day. “山東俘虜管制委員會簡章” [General Regulations for the Management of Prisoners of War in Shandong] (20 Aug., 1945) *SGLDZX* vol. 15, 266.

<sup>115</sup> “山東軍區處理偽軍偽警條例,” 266.

<sup>116</sup> “中共山東分局，山東軍區關於繼續進行敵偽軍工作的指示” [Chinese Communist Party Shandong Sub-Bureau Directive to Continue Enemy and Puppet Work] (20 Aug., 1945) *SGLDZX* vol. 15, 340.

control had vastly expanded, cadres were to widen their efforts to register the family members of former puppet soldiers.<sup>117</sup>

From this point on the term “puppet soldiers” became a more ambiguous term. It could refer to those who had previously fought for the Japanese, but increasingly, it could refer to anyone who fought in the central government’s army. During the war, military collaborators with Japan and Nationalist forces were distinguished. The latter called either the “allied army” (友軍) when the Party wished to emphasize the united front but they were more often referred to as the “stubborn army” (頑軍) when relations were hostile. After the war, Nationalist troops who had never fought for the Japanese might find themselves referred to as puppet armies to rob the central government of its claim to legitimacy.

As a result, there emerged a very unfortunate group of former military collaborators caught between two Communist policies. Those who surrendered in time could retain their weapons, unit integrity and sometimes even their commanders. This was true at least as late as June, 1945, when Han Shouchen surrendered and given command of a newly reorganized Fourth Independent Brigade in the army of resistance. These forces had picked the right side at a moment when a new stage in the Chinese civil war was about to begin and they could potentially avoid punishment for wartime crimes completely—or at least until future political campaigns in the 1950s and 1960s dug up their past sins once again. On the other hand, those who remained safely in Jinan, Qingdao, or a handful of strongholds in the otherwise Communist landscape of Shandong stood a reasonable chance—but as we shall see by no means a guarantee—of continued employment under a Nationalist regime desperate to reestablish its hold on the province. They could then defect to the Communist enemy

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<sup>117</sup> Interestingly, this document also included a hint at the troubled condition of the tens of thousands of prisoners in Communist custody. It attached a request that the conditions of prisoners of war be investigated due to reports that some prisoners “were not able to eat their fill,” which showed that the people’s militia was “lacking in discipline.”

work bureau when the opportunity presented itself and continue to serve as newly minted revolutionary soldiers.

The puppet soldiers who found themselves faced with the real prospect of punishment, now at the hands of “traitor elimination” cadres were primarily: 1) those already in Communist custody who had been captured as result of an attack and had not yet been released according to the “seven captures of Meng Huo” policy that was active up to the time of Japanese surrender, 2) those puppet soldiers who surrendered to Communist forces in or shortly after August, 1945. After Japanese surrender, these unlucky puppet prisoners of war would find themselves merged together with the ranks of other “puppet government employees” and enemy agents who were the primary targets of the traitor elimination cadres.

### *Magnanimity, Repentance, and Reform*

The world that puppet soldiers in custody around the time of surrender found themselves in was very different from the one they faced during the war. By the time of Japanese surrender, the work of traitor elimination cadres had gradually moved away from its roots in the liquidation business. During the period of Communist control in the Jiangxi Soviet period, and in Shandong during the early years of the resistance, traitor elimination work lived up to its name most fully, as its work often consisted of the arrest, trial, and execution of those deemed traitors. Though these were often referred to with the common word for traitor *hanjian* or, one who has betrayed the Han people, the term most directly referred to the betrayal of the Party and only indirectly the Chinese nation as a whole. Those accused were most often Party cadres accused of Trotskyist or other heterodoxy. They were overwhelmingly “internal traitors” (内奸), such as the victims of the “Huxi incident” who were accused of secretly plotting the destruction of the Party and working in league with international

fascism. Following the mass witch-hunt of Trotskyists in the Huxi Incident of 1939, along with several similar incidents, the Shandong Sub-bureau began to slowly deemphasize the threat of Trotskyists in its internal directives to traitor elimination cadres, call for greater attention to the threat of Japanese and Nationalist spies and, most importantly, reform the procedures for the punishment of accused traitors.<sup>118</sup> Increasingly, treason elimination work was to be carried out through the masses in the form of struggle sessions and mass trials.

While treason elimination cadres had to take responsibility for ensuring that liberated zones remained free of enemy spies, the Party purged of its critics, and uncooperative collaborators in nearby communities kept continuously under threat of liquidation, there was ever greater emphasis on using their work as another way to mobilize or awaken the masses. While enemy and puppet work teams stayed focused on winning over their enemy, treason elimination committees paid much closer attention to the number of passive peasants who were transformed into political subjects by a process of mobilization (發動 or 震動起來) than to the number and fate of traitors they apprehended. The reaction of the masses to any given sentencing and their numbers of attendance at mass assemblies were the subjects of extensive comment in treason elimination reports, while the facts of a case or the justice of any ruling were only important when some grave injustice had caused widespread discontent with the Party.

Prisoners were subject to a new set of regulations which merged the crimes of treason with those of war crimes, the “Provisional Regulations for the Punishment of War Criminals and Traitors

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<sup>118</sup> 第二區黨委 關於膠東托派案審查總結及對膠東鋤奸工作的初步意見 [Preliminary Views of the Second District Committee on the Conclusions of the Investigation into the Trotskyists of Jiaodong and on Treason Elimination Work in Jiaodong] (27 April, 1941) SZ G042-01-0001-006, 2.

in Shandong Province.”<sup>119</sup> It called for a sentence of death or 10 or more years of imprisonment for a wide range of crimes including:

- 1) Those who from start to finish showed loyalty to Japanese imperialism, were guilty of great crimes and had caused suffering for the people.
- 2) Those who were leading officers or conspirators who served in the Japanese military, intelligence organs, liaisons, or military police.
- 3) Those who, after Japan declared surrender, refused to surrender, and continued to resist, or killed the people.
- 4) In the confusion of war caused disorder.
- 5) Those who were leading officers and conspirators among the puppet military and police, were puppet officials, or who actively destroyed the efforts towards national liberation.
- 6) Those who killed or abused prisoners
- 7) Those leading conspirators who, through feudal societies and superstitious organizations served the enemy and actively destroyed the efforts towards national liberation
- 8) Those who massacred the people.
- 9) Those who arranged for betrayal and surrender to the enemy or who themselves treasonously surrendered to the enemy and actively destroyed efforts towards national liberation.
- ...

And so the list went on. Unlike the Nationalist regime’s own law for the punishment of traitors published in draft form later that winter, these regulations contained no mitigating clauses.<sup>120</sup> They were flexible enough in their definition that they could ensnare almost any military collaborator and sentence them to the ultimate punishment. After all, what puppet soldiers had not “treasonously surrendered to the enemy,” or at least “caused disorder” doing the war? Instead of mitigating clauses for those who had somehow helped the resistance or helped the people, only the magnanimity of the Party allowed traitors a chance to reform themselves, be forgiven, and welcomed back into the community. This “magnanimous policy” (寬大政策) was to serve as a general guide in all treatment of collaborators but, on the ground, puppet soldier prisoners would face two potential processes of

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<sup>119</sup> 山東省政府公布令 [Order Promulgated by the Shandong Provincial Government] (15 Aug., 1945) *SGLDZX* vol. 15, 214.

<sup>120</sup> A full translation of the Nationalist laws against treason found in, Yun Xia “Traitors to the Chinese Race (Hanjian): Political and Cultural Campaigns Against Collaborators During the Sino-Japanese War of 1937-1945” (PhD Diss., University of Oregon 2010), 305.

retribution and reform: one administered directly by treason elimination cadres of the Public Security bureau, and the other incorporated directly into the mass campaigns in the local community, in which treason elimination cadres played a more indirect role more akin to theatrical directors.

In the early months after surrender, puppet soldiers found themselves for the first time subject to a joint process of retribution together with other accused traitors. They were required to complete a program of re-education in a special “training unit” (偽組織人員訓練班) which included a process of supplying written confessions and open expressions of repentance (悔過). In Weihaiwei, on the northeastern coast of the Jiaodong peninsula, these training units were assembled October 2nd, 1945.<sup>121</sup> The course they were offered was carried out in two cycles to accommodate the large numbers of puppet employees, and were divided into two stages. The first stage consisted of a period of educational lectures on the nature of the new democratic government, lectures on the Party policy towards land reform, on the resilience of the Eight Route Army, on their accomplishments during the war of resistance, on the Party’s policy of leniency, and then a selection of public confessional speeches by former leading collaborationist officials. Two hours of classes were offered in the morning, followed by one hour of discussion and each day concluded with two hours of informal discussion (座談) in the evenings. The second stage of the course was conducted in small groups, during which time course participants were expected to produce detailed self-criticisms of their past behavior.<sup>122</sup> In order to promote sufficiently repentant behavior, in each group activists (積極份子) were cultivated who would urge the others on. Those who showed remorse passed the course, and would be conditionally released. Particularly stubborn or uncooperative course participants were forced to enroll in an additional short training course.

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<sup>121</sup> Weihai City Bureau of Public Security 威海市公安局 “1945年公安局工作總結” [Summary of Public Security Work in 1945] (1945) SZ G042-01-0014-010 p. 203

<sup>122</sup> Ibid., 204.

The first two cycles yielded 178 “graduates,” including 60 “puppet” village mayors, 71 officers of various ranks in neighborhood associations, 13 “puppet” secretaries, as well as a number of commerce chamber members, and city district chiefs. Most of the trainees were from poor backgrounds: 103 were poor farmers, 14 were registered as merchants, and only one a landlord. By the end of the total four months of training courses provided, two hundred more collaborators had completed the training course, and its targets had significantly expanded, including police chiefs, security guards, bandits, spies, “puppet” laborers, “puppet” teachers and students, puppet village level officials, and puppet soldiers.<sup>123</sup>

In Bohai district, a more scaled-down and decentralized process was adopted for an estimated 40,000 puppet soldier prisoners and other collaborators. Those in towns were processed directly by Public Security bureau cadres who manned special “Offices for Repentance” (悔過處), while in the country county government officials handled their cases.<sup>124</sup> Accused puppet soldiers were collectively registered and organized into training units with 70-80 puppet troops each. These units were given a mere two days of intense re-education that was to emphasize the forgiving nature of the Party’s magnanimous policy, the severity of their past crimes, and carry out group exercise of self-reflection and confession.<sup>125</sup>

Not all areas of Shandong had such organized re-education programs for puppet soldiers and other collaborators. In some, areas the processing of puppet soldier prisoners consisted of a more simple process of organizing a single mass rally, and have the assembled puppet prisoners collectively

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<sup>123</sup> Ibid., 206.

<sup>124</sup> This process of registration continued well passed the period of registering collaborators and puppet soldiers. Frank Dikötter, “The Emergence of Labour Camps in Shandong Province, 1942-1950,” *The China Quarterly*, no. 175 (September 1, 2003), 809.

<sup>125</sup> “公安局工作報告” [Report on Public Security Work (January to September, 1946) SZ G034-01-0464-001, 247-253.

express remorse for their crimes. The sheer numbers involved sometimes made it impossible to do more. For example, in Yongzhi county which had a total population of 180,000 in 1946, there were no less than 10,000 puppet soldiers, most of whom were poor farmers from the area.<sup>126</sup> After asking them to confess their crimes and write letters of self-examination (反省), they were allowed to regain their political rights.<sup>127</sup>

### *The Eight Great Disorders and the Oppose Treason Campaign*

“What have the violations of our policies been like over the past year? Those of disorder...the eight great disorders of *luan* (wanton, chaotic and indiscriminate) beatings, *luan* arrests, *luan* killing, *luan* punishment, *luan* imprisonment, *luan* torture, *luan* confiscations, and *luan* sealing off of buildings. One can say this explains the *luan* state of our policies.” Public Security Bureau Report, Bohai District, 1946<sup>128</sup>

The formal and almost bureaucratic process of purging guilt through repentance and re-education overlapped with a simultaneous process of mass trials for traitors. As Communist control was consolidated over dozens of towns, counties, and even a few cities that had been under some form of occupation by Japanese or puppet military troops, its new administrators subjected their inhabitants almost immediately to two increasingly linked campaigns, the “Rent and Interest Reduction” (減租減息) campaign and the “Oppose Treason and Voice Grievances” (反奸訴苦) campaign.<sup>129</sup> This second campaign was also called the movement to “Settle Accounts with Traitors”

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<sup>126</sup> Yongzhi county no longer exists, but was once located northwest of Liaocheng city along the western border with Hebei province.

<sup>127</sup> “介紹永智縣在大規模反奸清算運動中的幾點初步經驗” [A Preliminary Introduction to the Experience of Yongzhi County in the Large Scale Settling of Accounts with Treason Campaign] (1946?) SZ G051-01-0031-022, 8.

<sup>128</sup> “公安局工作報告,” 297.

<sup>129</sup> On the relationship between the Rent and Interest Reduction Movement and the Oppose Treason movement see Uchida Tomoyuki 内田知行, 抗日戦争と民衆運動 [Mass Movements and the War of Resistance Against Japan] (Tokyo: Sôdosha, 2002).



(漢奸清算). In the vast territories of Shandong liberated during the aggressive push of Communist forces in the last months of the war, the Oppose Treason campaign was both the main vehicle for retribution against both wartime collaborators and a preliminary blow against local elites that would soon become the main target of the massive land reform efforts that would follow.

Though it was carried out on a rolling basis as areas were liberated, the peak of the campaign in the Shandong base area was in the first half of 1946. It combined the public airing of grievances against collaborators with mass trials of selected suspects. Each town and village was to collectively request the purging of their community. The Shandong provincial archives holds a number of petitions of this kind, all dated February or March of 1946, calling for the new democratic government to punish collaborators. They are often signed by a list of family or clan representatives with an indication of the number of its members. While each of them have some variation in the list of their demands, most include the request that the new Shandong government under the Communist party carry out the, “disbandment of the puppet armies and strict punishment of traitors” Each petition then usually lists some of the local collaborators and their crimes, and sometimes includes an account of the deaths and possessions pillaged in attacks by a particular puppet army unit.<sup>130</sup>

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For a more general overview of the Reduction campaign in Shandong see Sherman Lai, *Springboard to Victory*, 207-226.

<sup>130</sup> Some examples of these petitions are “要求解散偽軍懲辦漢奸取消特務的呈” [Petition demanding the disbandment of the puppet armies, punishment of traitors, and liquidation of spies] (March, 1946) SZ G031-01-0271-032. “五龍縣穴坊區東賢村 控訴漢奸罪行要求嚴懲漢奸解散偽軍的呈壯” [Petition of Dongxian village in Xuefang district, Wulong county with accusations of treasonous crimes, demanding the strict punishment of traitors and disbandment of puppet armies] (Feb., 1946) SZ G031-01-0271-034 G031-01-0270-005. “掖山縣土山區孫家村 為要求嚴懲漢奸解散偽軍結束國民黨一黨專政成立聯合政府” [Demand of Sunjia village in Tushan district, Yeshan county for the strict punishment of traitors, disbandment of puppet armies, the end of one-party rule of the Nationalist party and the establishment of a coalition government] (Feb., 1946) SZ G031-01-0270-024.

For many communities in Shandong, the Oppose Treason movement and the Rent and Interest reduction movements were the first taste of the large scale mass political campaigns to be felt throughout China in the decades to come. The Oppose Treason campaign does not appear to have focused on puppet army officers and soldiers but for the first time puppet soldiers begin to appear consistently as a category in lists of cases and sentencing reports of treason elimination cadres summarizing their progress. At least some of these puppet soldiers subjected to mass trial were prisoners that had completed the process of registration and repentance but were found to have been guilty of particularly heinous crimes. In the eyes of the local population as well as the local cadres who lived and worked among them, the transfer of puppet soldiers and other collaborationist employees from the repentance and training process to public trials did not happen enough. Acknowledging a growing criticism of its policy of leniency, in the case of puppet soldiers in particular the Public Security Bureau blamed its failures on the difficulty in sharing information about alleged crimes from one county to the next.<sup>131</sup>

As a 1945 report on traitor elimination work in Kunlun county put it, “there is criticism of our paralysis. We think if the [puppet soldiers] confess we should be lenient and after show our magnanimity there is no need to continue to collect material [for their cases].”<sup>132</sup> The problem was also, however, that the reform and repentance process usually included at least one large rally where puppet soldiers and collaborators made their remorse public. In Zhaobei county, this was accomplished over the course of two days in rallies attended by 9,600 men, women, and children. Evaluating their response, the county administration noted that most people felt the government was showing its desire to follow the will of the people, but noted that other criticized it saying, “Today,

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<sup>131</sup> “公安局工作報告,” 257-8.

<sup>132</sup> “一年的鋤奸工作總結” [Overview of Treason Elimination Work Over the Past Year] (1945) SZ G042-01-0014-003, 2.

were they suddenly reborn when they confessed their crime? That is just too easy.”<sup>133</sup> Both administrators and the local populace began to take things into their own hands and the Shandong Party Sub-bureau found it impossible to control the retributive violence it had sought to channel into political mobilization. Reports came in of local militias refusing to hand over their prisoners, or of executing them rather than risk Party “magnanimity.”

Party officials were also eagerly joining in. In Bohai, for example, “the cadres are enthusiastic, but they usually believe that all the world under Heaven is ours. They lack political consciousness in the dealing with puppet police, traitors, and so on and simply view their task as one of revenge.”<sup>134</sup> Throughout the newly liberated districts, Party cadres were engaged in “wanton arrests and killing” (亂捕亂殺), wanton beating, and the torturing of prisoners. “The beatings and arrests have become as regular as one’s daily meal. Where the campaigns are being carried out, every village has its own jail and its own militia.”<sup>135</sup> Most of the violence, however, seemed to be at the hands of local militias (民兵) and those who attended the rallies organized in the Oppose Treason rallies. In one county carrying out the Oppose Treason campaign, it was reported that 40 treason suspects had been beaten to death by locals, 24 in a second, 8 in the county of Putai, and 20 accused “war criminals” (戰犯) stoned to death in the county of Gaoyuan.<sup>136</sup>

Retributive violence against collaborators, or at least carried out in the name of vengeance against collaboration, is found in formerly occupied territories throughout the world in 1945, and the violent repression carried out by the occupier and puppet armies in Shandong gave its population

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<sup>133</sup> “關於處理漢奸級戰爭犯罪情形的報告” [Situation Report on the Handling of Traitors and War Criminals] (6 Oct., 1946) SZ G031-01-0318-004, 5.

<sup>134</sup> “公安局工作報告,” 280.

<sup>135</sup> Ibid., 289.

<sup>136</sup> Ibid., 161, 291. It is unclear if these war criminals were soldiers in the Japanese imperial army or puppet soldiers.

more than enough reason to demand punishment. Beyond this, at least two factors contributed to the scale of retributive violence in Shandong. The first was the mass character of campaigns themselves. Treason elimination cadres, especially those in Shandong, were on notice for their excesses in earlier years, whether this was mass executions like those carried out at Huxi, a tendency to pursue vendettas and the “subjective” punishments of traitors, or for causing general fear among the peasants when secretly arresting and executing suspects (密捕密決) in the dead of night.<sup>137</sup> The mass trial approach that was developed in the last years of the war tried to combine meticulous stage management of trials with an effort to carry out of the will of the people and thereby win their support. Activists were planted, suspects chosen, evidence carefully prepared, but disappointment expressed at the outcome in some internal reports suggest that the outcome of trials was at least sometimes genuinely left up to the people, with calls for execution subject to confirmation from the district leadership. It was essential to create the impression that the people were sovereign, while the Party merely carried out its wishes. When it was reported that the people did not feel their will was carried out in treason trials, this was blamed on insufficient preparation by traitor elimination cadres.<sup>138</sup> This process of managed empowerment of the people lay at the heart of the Party’s ability to rapidly gain trust in areas it captured, but was a double-edged sword. The time and manpower required to prepare and direct these trials might have been manageable in wartime years, but in 1945 and 1946, cadres were completely overwhelmed. Their control over the trial process deteriorated as a result.

The second significant factor contributing to the scale of violence in Shandong was the huge growth in people’s militias. These forces, often armed to some degree, played an important role in

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<sup>137</sup> “第二區黨委 關於膠東托派案審查總結及對膠東鋤奸工作的初步意見” [Preliminary Views of the Second District Committee on the Conclusions of the Investigation into the Trotskyists of Jiaodong and on Treason Elimination Work in Jiaodong] (27 April, 1941) GZ G042-01-0001-006, 4.

<sup>138</sup> “第二地委關於1941年上半年（1月至6月）鋤奸工作總結報告” [Summary Report of the Second Regional Committee on Treason Elimination Work from January to June of 1941] (1941) SZ G042-01-0001-012, 13.

rapidly expanding a nominal Party presence in areas beyond the wartime base area as the war drew to an end, but they lacked discipline and often ignored directives, especially where Party authority was still weak. The militias of towns began to fight with each other, with militias of one village threatening to arrest the collaborators of neighboring communities.<sup>139</sup> In a reference to the brutal counter-insurgency raids of the Japanese, it was reported in one district that the local militias had been, “carrying out a mopping-up campaign for three months.”<sup>140</sup>

Not surprisingly, word of the uncontrolled violence against puppet soldier prisoners and collaborators alike was beginning to reach the puppet troops that had not yet surrendered. Word of their responses, in turn, made their way back to the Party. “If you are going to surrender, do it directly to the government. If the people’s militia catch you, they will stone you to within an inch of your life,” one was reported saying. Another pointed out the risks of magnanimity being combined with mass rallies where their victims could call for their death, “The government is magnanimous, but if the people in the village aren’t magnanimous, it does you no good.” And again, “There is lenient, and then there is lenient. If they ‘struggle’ the life out of you, what good does it do you?”<sup>141</sup>

This was precisely the kind of distrust that jeopardized the continuing work of the enemy and puppet cadres after Japanese surrender. It could even threaten the base area’s control over whole communities as another report from Jiaodong pointed out. “You must be careful in carrying out the Oppose Traitors campaign. In some villages there were a relatively large number of surrendered puppet soldiers and their families. If they come under attack [by the movement], they will resist us

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<sup>139</sup> “最近在反奸訴苦的鬥爭中發生很多違犯政策的現象 1947.5.1 山東省公安局總局” [The Phenomenon of many Violations of Government Policy in the Recent Anti-Treason and Venting Grievances Struggle] (May 1, 1947) SZ G010-01-0019-007, 159.

<sup>140</sup> Ibid., 158.

<sup>141</sup> “公安局工作報告,” 310-1.

and come under the influence of bad elements.”<sup>142</sup> Most of all, however, it meant more men under arms serving the armies of the Nationalist government. An intelligence report on the state of puppet troops in Luzhong from the summer of 1946 saw this as translating directly into a military threat. There an estimated 50,000 puppet soldiers had joined 38,700 Nationalist forces entering into Shandong after Japanese surrender. The report lamented that these Luzhong puppet soldiers had not been won over and that they had failed to appreciate the Party’s policy of leniency.<sup>143</sup> The reason for this was not hard to grasp, as the report admitted. The soldiers were terrified of the Party’s mass movements, saying, “Even if the Eighth Route Army forgives me, the people cannot.”

### *Conclusion*

There was a girl whose father was executed by shooting. She cried continuously as she faced the war criminal and accused him of the crime. Then she climbed up onto the stage and beat him to death with a stone.

*Reaction:* The masses were moved and began to cry.

-Example case from the “Oppose Treason and Voice Grievances” campaign in Rizhao county, Public Security Bureau Report, 1946.<sup>144</sup>

The Communist Party in Shandong province understood just as well as the Nationalist regime that the tens of thousands of Chinese soldiers who helped maintain the Japanese occupation

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<sup>142</sup> “爭取瓦解偽軍工作指示” [Directive on the Winning Over and Disintegration of Puppet Armies] (6 Nov., 1945) SZ G031-01-0695-009, 3.

<sup>143</sup> “偽軍的主要情況” [The Basic Circumstances of the Puppet Military] (June 15, 1946) SZ G050-01-0006-006, 119.

<sup>144</sup> The “war criminal” (戰犯) was most likely Chinese. In contrast with Nationalist legal cases, in Communist documents the term was not exclusively used for Japanese soldiers. The ethnicity of the accused was not explicitly clarified in this case but others mentioned in the document were puppet soldiers and various other Chinese collaborators, with no reference made to Japanese soldiers. A chart it included divided those who were put before mass rallies into Nationalist spy suspected of treason (國(兼漢奸)特), puppet official (偽官長), enemy spy (敵特), puppet soldier (偽(兵)軍), and generic traitor (漢奸). 16 out of 155 were executed. Rizhao county Public Security Bureau 日照縣公安局 “全縣反奸訴苦大會總結” [Summary of the Oppose Treason and Voice Grievances Mass Rallies Throughout the County] (3 April, 1946) SZ G042-01-0283-007.

in the peninsula were as valuable for their manpower and their rifles as they were reviled for their treason and their violence. This value did not diminish with Japanese surrender and the approach of a devastating civil war. The Party's wartime efforts to win over military collaborators, shield them from retribution, and redeploy them were renewed in the postwar period, but as we saw, this was punctuated by a short period in which tens of thousands of Chinese treated as prisoners of war found themselves caught up in twin processes of reform and retribution in the fall of 1945 and spring of 1946. Here too the Party pressed hard to limit the scope and severity of retribution through its policy of magnanimity, but found this impossible to achieve.

If puppet soldiers feared retribution in the mass trials carried out throughout Shandong in 1945 and 1946, their alternative was to be a part of Chiang Kai-shek's "conspiracy" to merge his troops with the puppets. Just as the major puppet army commanders who were won over to Communist control in Shandong, including Mo Zhengmin, Zhang Xixian, Han Shouchen and later Wu Huawen, retained command of their forces and went on to successful postwar careers in the People's Republic, many puppet commanders in the province were able to rejoin the Nationalist army, and some estimated 100,000 puppet soldiers joined them.<sup>145</sup> These include Zhang Tianzuo, Ning Chunling, Wang Jimei, and Wang Jinyang. Some, such as Cao Keming survived the civil war in Shandong and joined the Nationalist retreat to Taiwan.

The fate of puppet commanders who stayed in the few Nationalist controlled areas was not guaranteed, however. Two of the most important wartime puppet army generals, Zhang Buyun and the former Japanese citizen Zhang Zongyuan were both executed after being tried by the courts of the

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<sup>145</sup> “粉碎將，日，偽合流” [Smashing the Merger of Chiang Kai-shek, Japan and the Puppets] SZ <http://sd.infobase.gov.cn/bin/mse.exe?seachword=&K=a&A=17&rec=506&run=13> (Accessed July 2, 2012)

Nationalist administration. Zhang, tried for “pillage, murder, and treason,” was executed in Qingdao, January 1948.<sup>146</sup>

Zhang Zongyuan’s origins made his case more complicated. Even though the Nationalist government’s law for the punishment of treason did not stipulate that those charged have Chinese citizenship and, in fact, tried number of foreigners for the crime, Japanese prisoners of war were to come under the laws for prosecution as war criminals.<sup>147</sup> Though born in Japan, Zhang Zongyuan claimed ties to a Chinese ancestor that had joined the crew of a Japanese pirate ship during the Ming dynasty.<sup>148</sup> Zhang’s convoluted case resembled the challenge faced by the Nationalist government in prosecuting the last Chinese and later Manchurian emperor Puyi’s cousin Kawashima Yoshiko, as well as a small number of accused Taiwanese traitors who could claim they were Japanese citizens during the time they committed their alleged treason.<sup>149</sup> Like Kawashima Yoshiko, who at various times described herself as Chinese, Manchurian or Japanese, after his arrest Zhang Zongyuan could not seem to make up his mind whether he wanted to be treated as Chinese or as Japanese. A military investigation looking into the problem was equally confused and ruled he had two native places. It

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<sup>146</sup> Reference to his sentence is found in “一般資料 呈表彙集 (121)” [Regular Materials - Collection of Reports and Tables 121] (8 Jan., 1948) Taiwan Digital Archive <http://catalog.digitalarchives.tw/item/00/37/0c/31.html> (Accessed July 2, 2012)

<sup>147</sup> On trial of various non-Chinese citizens for treason in China see Jiu-jung Lo “Trials of the Taiwanese as Hanjian or War Criminals and the Postwar search for Taiwanese Identity” in Kai-Wing Chow, Kevin Michael Doak, and Poshek Fu, ed. *Constructing Nationhood in Modern East Asia*. (University of Michigan Press, 2001) 288-9. On the cases of French citizens being charged with treason in China, see Marie-Claire Bergère “The Purge in Shanghai, 1945-6: The Sarly affair and the End of the French Concession” in *Wartime Shanghai* (New York: Routledge, 1998), 160-164.

<sup>148</sup> See the articles on Zhang’s case in the Qingdao press. 平民報 (22 July, 1946), 3. 青島公報 (21 July, 1946), 3.

<sup>149</sup> For more on Kawashima Yoshiko’s fascinating case see Dan Shao’s “Princess, Traitor, Soldier, Spy: Aisin Gioro Xianyu and the Dilemma of Manchu Identity” in Mariko Tamanoi, ed. *Crossed Histories: Manchuria in the Age of Empire*. (Honolulu: Association for Asian Studies and University of Hawai’i Press, 2005) and Dan Shao *Remote Homeland, Recovered Borderland: Manchus, Manchoukuo, and Manchuria, 1907-1985*. (Honolulu: University of Hawai’i Press, 2011), 221-244. On the trial of Taiwanese as Chinese traitors, see Jiu-jung Lo “Trials of the Taiwanese,” 279-316.



claimed this merely made the severity of his crime, which was to include “war crimes and treason” (戰犯漢奸) among others, all the more serious.<sup>150</sup> He was executed in Shanghai, in June, 1948.

On the Communist side, those puppet soldiers who were subjected to mass trials in the Oppose Treason campaign of 1945 and 1946 were sentenced in a legal process which was not terribly concerned with which particular crime its convictions were filed under, even if its campaign was ostensibly organized to target those guilty of collaboration. On the contrary, from the Party’s perspective, the key was to tie this process to its preparations for full scale land reform by linking it with the Rent and Interest Reduction campaign. It was to accomplish this, as a report from northern Binhai explained because, “The Oppose Treason campaign is a movement with two sides. One is the national struggle (民族鬥爭). It is a struggle of all the classes against the small time traitors. Secondly it is a class struggle, a way to attack landlords who maintained their wealth through their treasonous acts.”<sup>151</sup> Of these, the second was by far the most important. Puppet soldiers were thus largely peripheral to this process, all the more so because they often came from relatively humble origins and were needed in the fight against the Nationalists.

From the perspective of the population, however, the military collaborators who were briefly subjected to mass justice were as reviled as the Japanese occupier. Indeed, for those who lived in areas without regular Japanese patrols, these Chinese military collaborators were the *only* face of the long occupation. Having stood by during the war while dozens of small groups of military collaborators transformed overnight by the Enemy and Puppet Work teams into units of the army of resistance, it is not terribly surprising that many had little patience for the Party’s “policy of magnanimity” when their opportunity finally came for retribution.

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<sup>150</sup> 平民報 (22 July, 1946), 3.

<sup>151</sup> “反奸訴苦總結” [Overview of the Oppose Treason and Voice Grievances [Campaign]] (June, 1946) SZ G031-01-0340-001, 5.

## **Epilogue: The Rise of Transitional Justice and the Long Decline of Treason**

In the opening chapter of this dissertation I argued that trials for wartime atrocities under the laws and courts of treason were not limited to the countries and former colonies this work has focused upon. They were common to most of the states affected by the Second World War. Some of the treasonous war criminals brought to trial were executed or served prison sentences. Others were caught up in the waves of retributive violence outside the courtroom. For those who faced trial, why did it matter what was written on their indictments? Why should victims have cared if their torturers were tried in a tribunal for treason or one for war crimes? As long as the perpetrator's deeds were denounced and their violence punished, what difference did it make? It is unlikely that the woman we met in Chapter Seven, who confronted her father's killer on the stage and proceeded to beat him to death with a stone, was at all interested in the fact that the accused had been put before the villagers as part of a political campaign against traitors, rather than as a murderer. The young Filipino girl who survived a massacre of hundreds to testify in court against the accused Makapili member Florentino Canibas may not even have known the accused stood on trial for the "complex crime" of treason with murder.

It may not have made a difference to these particular victims in the early aftermath of war but each of the chapters of this dissertation has argued that punishing brutality as betrayal had significant consequences on both the specific outcomes of the proceedings, and upon the broader political environment in which they took place. Nowhere was the prospect of treason trials, of any kind, as flawed an approach as in the late colonial contexts of India and Burma. In India, the attempt to punish the "turncoats who happened to be brutes" not only produced a violent backlash, but further weakened proceedings across Southeast Asia where there were more appropriate targets for

prosecution. In Burma, the highly politicized process of trying military collaborators was abandoned entirely. While Japanese war criminals were being tried for the massacre of Britain's loyal minority guerrillas, colonial officials blocked any attempt to try Burmese soldiers who had participated in similar acts. In the Philippines, I have argued that the very creation of the category of military collaborators that was excluded from the amnesty of 1948 was a deeply problematic. Moreover, some of the characteristics of the treason law itself had a profound impact on the selection of the accused and the evidence required to secure conviction.

The impact of treating wartime violence as treason did not merely have an impact on the legal process of retribution. It further facilitated an alternative approach that emphasized the reformability of the traitor. Downplaying dark deeds condemned in any other context, unwieldy numbers of military collaborators were portrayed as mainly guilty of crimes of the heart or victims of an unfortunate affliction. This made it all the easier to justify large-scale efforts to transform them into soldiers that could be redeployed once more in the service of the nation. Philippine constabulary members could return to the field to fight against their old wartime Huk enemies, Chinese puppet soldiers could redeem themselves in the eyes of the revolution, and Indian National Army soldiers could "take another crack" at the Japanese.

The trials, attempts at trials, or reform of traitors described in the chapters here were deeply troubled processes that either failed to justly reckon with wartime atrocities or themselves helped contribute to the violence and instability in the early postwar period. In these closing pages I want to suggest that the phenomenon of punishing the crimes of war under the laws of treason in the aftermath of the Second World War came at the cusp of a global transition; a transition which mirrors a related process far better understood: the rise of transitional justice and international humanitarian law in the twentieth century.

*Transitional Justice and the Justice Cascade*

The pattern in which wartime atrocities became wrapped in treason or collaboration trials broke down in the second half of the Twentieth century. In recent decades a number of important war criminals who were not of German heritage would face trial only for their crimes against humanity, and not those against nation. These include the Dutch SS officer Pieter Menten, the Danish Waffen-SS volunteer Søren Kam, the Ukrainian death camp guard John Demjanjuk, the Lithuanian guard Vladas Zajančkauskas, former Croatian minister of interior Andreja Artuković, Croatian commander of the Jasenovac concentration camp Dinko Šakić, and the Estonian guard in the Tartu concentration camp Karl Linnas. Some of these were tried in their home countries. France convicted Vichy period police chief Christian Bousquet, former head of the Lyon militia Paul Touvier, and Maurice Papon for crimes against humanity beginning in the 1990s.<sup>1</sup>

Indeed, over the past few decades the spectacle of elderly war criminals, both German and non-German, being dragged out of quiet retirement by persistent Nazi hunters, sent across the world, and dying while awaiting conviction for the murder of thousands has become so common, it is hard to keep one case distinct from the other. To be sure, no equivalent exists in Asia either for Japanese war criminals, or those among its former allies who committed atrocities.<sup>2</sup> Nor, should we fail to note, was the absence of the Western Allies remedied in the process of decolonization in the region. For example, there has been very little significant momentum for national trials of Dutch soldiers guilty of atrocities in Indonesia, French and Americans in Vietnam, or the British torturers of

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<sup>1</sup> Mark Lattimer and Philippe Sands eds. *Justice for Crimes Against Humanity* (Oxford; Portland, Or: Hart, 2003), 113-4. A more famous French case was against Klaus Barbie, but he was German.

<sup>2</sup> One possible exception is the small number of wartime collaborators (including the last Qing emperor Pu Yi) returned from Soviet custody and Chinese Nationalist figures who were sent as war criminals to the Fushun War Criminals Management Center in 1949 and the 1950s. Their cases are in need of study.

Malaya—either in their home countries or their former colonies.<sup>3</sup> Even in these cases, however, if trials or some other process of reconciliation was adopted, it would no longer seem at all out of place. This is because of the monumental rise of transitional justice since the end of the Second World War.

Transitional justice is a term for a set of retributive and restorative practices that respond to large-scale atrocities and other human rights violations. These include trials, lustration, truth commissions, reparations, memorialization, as well as the reform of security organs such as the police and military.<sup>4</sup> Unlike other terms favored by historians such as “political trials” or “political retribution,” transitional justice is both a descriptive term that groups a number of disparate processes together and one which includes a strong normative component emphasizing the moral goal of rectifying injustice. As a result, both social scientists and practitioners often limit the term to cases of states transitioning to democracy, especially from the 1970s on.<sup>5</sup> The widespread adoption of this term is not a trivial discursive shift, but one that was possible thanks to the series of changes which gave rise to what Kathryn Sikkink and Ellen Lutz call the “justice cascade.”<sup>6</sup> These

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<sup>3</sup> French war criminals of Indochina and Algeria, for example, were protected by amnesties passed in the 1960s. Further, “crimes against humanity” were, until very recently, only recognized in postwar France when the accused were connected to the Axis powers, as established in the London Charter. Yves Beigbeder, *Judging War Crimes and Torture: French Justice and International Criminal Tribunals and Commissions* (1940-2005) (Leiden; Boston: Martinus Nijhoff, 2006), 10, 118. For discussion of British torture techniques in various colonial contexts see, Darius Rejali, *Torture and Democracy* (Princeton University Press, 2009), 330-1. The United Kingdom did eventually come before the European Court of Human Rights in 1978, in *Republic of Ireland v. United Kingdom* for its ‘five techniques’ of torture of Irish Republican Army suspects. However, not only was this an international suit, one of few before the European court, but also these did not include the beating, flogging, and electricity used in some of its colonial territories. For more on the case see John Conroy, *Unspeakable Acts, Ordinary People: The Dynamics of Torture* (Berkeley, Calif: University of California Press, 2001), 123-128. A broader discussion of

<sup>4</sup> See “What is Transitional Justice” Fact sheet produced by the International Center for Transitional Justice. <http://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (Accessed: July 15, 2012)

<sup>5</sup> One of the important exceptions to this is the political and social theorist Jon Elster, who has argued persuasively that study of transitional justice as such must not limit itself to modern or democratic regimes. Only by studying the larger universe of cases—and his work looks as far back as ancient Athens—can we fully appreciate the ways in which, for example, communities learn from past transitions. Jon Elster *Closing the Books*, 1-2.

<sup>6</sup> Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (W. W. Norton & Company, 2011). This book is an expansion upon the article which first laid out the argument. Ellen Lutz

developments came about in no small part thanks to the selective and imperfect prosecutions against war crimes after the war. In an essay on the genealogy of transitional justice and the discourse around it over the past few decades Ruti G. Teitel divides its development into three phases, the first of which culminated in the Nuremberg and Tokyo trials.<sup>7</sup> Most other works also point to this as a foundational moment for transitional justice. The trials helped inspire the Universal Declaration of Human Rights, the Genocide convention, and influence the 1949 Geneva Convention, but diplomats failed in their early postwar efforts to create an International Criminal Court. The lack of a cooperative spirit in the international community as Cold War loyalties hardened was certainly a key to this failure, but just as important was the realization of how great the sacrifice of national sovereignty would be entailed by any permanent court.<sup>8</sup>

A second phase in the development of transitional justice is tied to the wave of transitions beginning in the 1970s and accelerating into the post-cold war. Transitions in Spain, Portugal and Greece were followed soon by a wave of regime changes in Latin America. For Teitel, the most important feature of this period is the way in which tensions between demands for punishment and amnesty helped generate new ways of confronting the past beyond the criminal trials of early postwar period. This created new debates that balanced issues of punishment with attempts to uncover truth and pursue reconciliation, as well as find a balance between maintaining peace and achieving justice.<sup>9</sup>

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and Kathryn Sikkink, "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America" *Chicago Journal of International Law* 2 (2001): 1-34.

<sup>7</sup> Ruti G. Teitel "Transitional Justice Genealogy" *Harvard Human Rights Journal* 16 (2003), 69-94

<sup>8</sup> Opposition to the court in the United Nations Committee on International Criminal Jurisdiction was worried about the lack of a clear code of law, on rules over jurisdiction and enforcement possibilities. Remedying this problem would require, as their concluding report in 1953 admitted, a surrender of state sovereignty that was highly unlikely to be achieved. Michael J. Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency* (Macmillan, 2008), 52-65.

<sup>9</sup> Teitel "Genealogy," 76-85.

In Teitel's final phase, the justice of transition moves from the periphery to the center. It has entered a period in which the normalization of transitional justice and the expansion in the laws of war have given rise to new risks as calls for humanitarian intervention and defense against terror are subject to ever greater politicization.

If Teitel is more focused on the development of law and specific practices as a result of these changes, Sikking's "justice cascade" is centered upon the "Shift in the legitimacy of the norm of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm."<sup>10</sup> Instead of distinct and somewhat disconnected phases, Sikking sees this cascade formed by the merger of a "streambed" of international humanitarian law, a growing number of state prosecutions both international and national in scope, and finally an increasingly important role for non-state actors, including Amnesty International and domestic human rights organizations around the world. Again, the early postwar trials were a foundational moment, but for Sikking as well as a number of other scholars, their greatest contribution was that they led to an, " 'individualization' of international law, because it focused on the individual—both as the perpetrator of crimes and as a victim who had standing to bring forward cases against perpetrators."<sup>11</sup>

The fact that individual criminal responsibility of perpetrators for atrocities was established in the international tribunals after the Second World War is duly noted by every scholar of the trials, but as Sikking notes, the individualization of the victim is also important. This is not at all clear in many of the charges issued in the international tribunals, which played such a heavy emphasis on the crimes of aggression that involved Germany and Japan's invasion of its neighbors. In these cases, the victims

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<sup>10</sup> Sikking *Justice Cascade*, 5.

<sup>11</sup> *ibid.*, 98-99. Emphasis added.

were the occupied countries as a whole and, compared to later war crimes trials for conflicts in Yugoslavia and Rwanda, the ties to individual atrocities were somewhat more tenuous. It was in the national-level war crimes trials and in the American military tribunals that the individualization of the victim was most prominent. In these trials Japanese military police were tied directly to their torture victims and Japanese generals tried, for example, for command responsibility in the cases of massacres in Manila or the horrors of the Bataan death march. In historical terms, this second shift is even more important when we move beyond an effort to trace transitional justice as a process with clearly defined origins somewhere in the twentieth century, or else as emerging boldly from a long and tainted history of political trials. The extent to which this was also achieved in postwar treason trials for atrocities is more mixed. In the treason trials we have looked at, in the Philippines, for example, this individualization did happen to a certain extent. Victims of specific acts of violence could face the perpetrators of torture and massacre in trials. Under the rules for complex crimes, however, they shared their status of victim with the nation. When Constabulary, or Puppet Armies were returned to service after proving their loyalty or joining the revolution, their wartime atrocities could be completely whitewashed since it was understood that their primary crime, if any, was a nation, or Party, willing to forgive its children.



### *The Long Decline of Treason*

Treason is a crime of the most dangerous and fatal consequence to society, it is of a most malignant nature; it is of a crimson colour, and of a scarlet dye.

- *Pennsylvania v. John Roberts* (1778)<sup>12</sup>

What came before transitional justice and its crimes against humanity? More often than not, in times of violent political transition or ‘successor trials,’ it was treason which reigned.<sup>13</sup> Were all the trials of this kind before 1945 merely cynical grabs for power or efforts to weaken competitors? I don’t think that is fair, but there is no need to argue that point here. Political trials up until the mid-twentieth century, especially those in transition, typically did not individualize the victim. When they bothered to defined one, the crime was against an injured party, to be sure, but that injured party was often a community, a realm, a way of living, a political party, or a nation. The major exception to this was in the age before the nation-state when, as in old English treason laws for example, the accusation was of, “compassing the king’s death” or “levying war against him.”<sup>14</sup> In the Tang dynasty legal code, treason was closely tied to parricide and was eventually given identical sentencing.<sup>15</sup> The convictions themselves, however, were often for acts in which the monarch was the sovereign and only corporeal representation of any real individuals harmed. Also, while treating the sovereign as the violated party was widespread, it was not true of all treason laws before the rise of the modern nation-state. In the Roman Republic and the empire that followed, the treasonous crime of

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<sup>12</sup> A judge in the case of *Pennsylvania v. John Roberts* (1778). Quoted in Bradley Chapin, *The American Law of Treason, Revolutionary and Early National Origins* (Seattle: University of Washington Press, 1964), 69.

<sup>13</sup> Teitel makes the same point. Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 29.

<sup>14</sup> Michael Head, *Crimes Against the State: From Treason to Terrorism* (Ashgate Publishing, Ltd., 2011), 24-5.

<sup>15</sup> Timothy Brook, Jérôme Bourgon, and Gregory Blue, *Death by a Thousand Cuts* (Harvard University Press, 2008), 84.

*maiestas* was short for *maiestas minuta populi Romani* or “diminishing the majesty of the Roman people,” and the ancient Athenian crimes of betrayal and subversion were for the betrayal and subversion of Athenian democracy.<sup>16</sup>

Treason was rarely alone, but it was almost always lead protagonist of any conspiracy. To it was often attached any number of heinous deeds, as in the case of the indictment of Charles I above. For the most part, however, they were secondary crimes, supporting actors in a plot of betrayal. At the trial of King Louis XVI in late 1792, several dozen complex charges were brought against him, but many of them focused on accusations he had conspired with the enemies of France. It was these charges, claimed Camille Benoît Desmoulins in his passionate speech advocating for a sentence of execution, that were most, “odious to the people,” since, “Treason was always with every nation the most abominable of crimes.”<sup>17</sup> As far as I have been able to determine, Desmoulins was right. The crimes of betrayal, however they were named, were usually among the most despised of all crimes. Of the “ten abominations” that constituted the most despicable crimes in the Ming dynasty code, for example, half are crimes of betrayal and disobedience on some scale: plotting rebellion, plotting great sedition, plotting treason, contumacy, and lack of filial piety.<sup>18</sup>

If Nuremberg, Tokyo, and the many other war crimes trials of the early aftermath of the war were a powerful foundational moment in the rise of transitional justice and the ‘justice cascade’ effect, they were preceded by a long tail of important developments in law and human rights. These included the

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<sup>16</sup> J. A. Crook, Andrew Lintott, and Elizabeth Rawson, *The Cambridge Ancient History* (Cambridge University Press, 1994) vol. 9, 518. Douglas M. MacDowell, *The Law in Classical Athens* (Cornell University Press, 1986), 175-9. The other major crime in Republican and Imperial Rome that came to be used for crimes of betrayal of the state, *perduellio*, grew out of a more generic term for atrocious crimes. George Mousourakis, *The Historical and Institutional Context of Roman Law* (Ashgate Publishing, Ltd., 2003), 145.

<sup>17</sup> Lewis Copeland, Lawrence W. Lamm, and Stephen J. McKenna, *The World’s Great Speeches: Fourth Enlarged Edition* (Courier Dover Publications, 1999), 72.

<sup>18</sup> Yonglin Jiang, *The Great Ming Code: Da Ming Lü* (University of Washington Press, 2005), lxvi.

nineteenth century campaigns against slavery, the Hague conventions, the response to the horrors of the First World War, and the minority rights movement in the League of Nations. We are now witnessing a reverse of this trend in the case of treason. The great collaboration trials after the war—where they reached any significant scale—represented a last global surge in retribution against those who had betrayed the nation; those who violated what the moral philosopher Michael Sandel might call the ‘obligations of solidarity’ that he and other communitarians hold to be inescapable.<sup>19</sup>

Of course, treason did not disappear from the face of the earth at the close of the 1940s, but the postwar period can be described as its long declining tail. It remains strongest outside of the courtrooms, where a passionate hatred for those who are seen to have betrayed the loyalties demanded by community may well be a constant of human society. Almost every conflict of the postwar involved cries of traitor as well as summary executions and disappearances carried out in the name of punishing treason. The two greatest genocides of the postwar period, in Cambodia and in Rwanda fed upon it. In Cambodia, the victims were accused traitors to the communist *Angkar*, or the ‘organization.’ Their confessions, obtained under torture, described acts of petty sabotage against the revolution that were punished with execution in the killing fields. In Rwanda, the wholesale massacre of Tutsis and their Hutu “collaborators” is a famous example of ethnic violence, but it was partly justified by their alleged treasonous support of rebels and other conspiracies of betrayal. In the revolutionary wars of Libya and Syria too, rebels have aggressively hunted down and massacred suspected informers and government sympathizers, while all the authoritarian governments affected by the Arab Spring have more than matched them in their own efforts to liquidate traitors.

In courts around the world, however, a change is easy to recognize, even in legal systems that fall far short of international calls for fairness. Together with the shift in the legitimacy of the norm that

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<sup>19</sup> Michael J. Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Straus and Giroux, 2010), 225.

represents the 'justice cascade,' we are witnessing the gradual decline of treason as the preferred means of judicial retribution. Increasingly, the victim is no longer defined as the nation as a whole. With each small step towards the recognition of individuals as victims, with each of their personal suffering highlighted, and as each assailant is drawn into the various practices that constitute transitional justice, treason dies a little. In the Greek trials of the military junta and its police forces in 1974, the leaders of the military junta were all tried for high treason in the first trial, but the subsequent trials were for torture and murder alone. In the wave of transitions in Latin America, those that held trials would increasingly charge their former leaders and their police and military organs with human rights crimes while those including charges of treason decreased in number. However troubled they were as legal proceedings, the trial of Saddam Hussein in Iraq was for crimes against humanity, of Zine El Abidine Ben Ali in Tunisia (in absentia) was for complicity in the murder of 43 protesters, and against Hosni Mubarak in Egypt for complicity with murder of protesters and corruption. None of these trials included charges of treason.

As always, there are exceptions. In South Korea, former presidents were tried for treason but were quickly amnestied in 1997. A much-noted Special Act in 2004 was passed to investigate the treasonous conduct of colonial period collaborators and an act was passed in 2005 to confiscate the property of some colonial collaborators. Even in a Korea, where a long suppression of the collaboration issue has contributed to widespread interest in recent years, these acts were far outnumbered by other acts of legislation that have helped the country confront the atrocities of Korea's recent history, including the removal of statutes of limitation on human rights crimes, acts to investigate suspicious deaths and establish a process of truth and reconciliation.<sup>20</sup> Some of these

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<sup>20</sup> Kuk Cho "Transitional Justice in Korea: Legally Coping with Past Wrongs After Democratization" *Pacific Rim Law & Policy Journal* vol. 16 no. 3 (2007), 579-611. On the suppression of the issue see Koen de Ceuster "The Nation Exorcised: The Historiography of Collaboration in South Korea" *Korean Studies* vol. 25 no. 2 (2002), 207-242. Many

changes are no doubt due partly in thanks to pressure from international organizations and other states that provide aid to countries in transition. Left to carry out retribution without outside interference, some states would doubtlessly continue to carry out trials for treason in unwitting imitation of their predecessors. In February, 2012, one of the first trials in Libya after its recent revolution charged 50 people of the crime of “treason against the revolution,” but this was the same crime that was used by Qaddafi's government to punish the opponents that now came to power. The trial was delayed, however, and more recent proceedings list charges that highlight the atrocities of the accused.<sup>21</sup>

What we are witnessing is not the outcome of a zero sum game but something close to it. Amartya Sen argues, and I agree, that a theory of justice must acknowledge the strength of “plural grounding,” the idea that we may disagree on what may be the “dominant reason for the diagnosis of injustice” in any given case, but that we should be able to identify a “plurality of impartial reasons” in our condemnations.<sup>22</sup> Charges of betrayal of a nation or community, so closely linked to the core positionality of the accuser and the accused, are generally poor candidates in establishing such impartial reasons for condemnation—especially when there are alternatives to be had in the form of tangible harms committed against specific people. Nor do they sit well with Sen’s call for non-parochialism as a required component of justice. I hold that it is extremely difficult to, “view our sentiments from a certain distance from us” on the one hand, and navigate the complex layers of

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of these efforts have been hampered by the current administration which has decried the way these investigations, including the act against collaborators, has become a political weapon of its opponents, but in this it strongly resembles the way in which the shifting politics of post-1989 politics in East Europe has had a heavy impact on whether or not lustration and prosecutions are carried out. See Monika Nalepa, *Skeletons in the Closet: Transitional Justice in post-Communist Europe* (Cambridge; New York: Cambridge University Press, 2010).

<sup>21</sup> “Delays in a Trial Show Libya’s Legal Disarray” *New York Times* February, 15, 2012 <http://www.nytimes.com/2012/02/16/world/africa/in-libya-a-trials-delays-reflect-judicial-disarray.html> (Accessed: August 10, 2012).

<sup>22</sup> Amartya Sen, *The Idea of Justice* (Cambridge, Mass: Belknap Press of Harvard University Press, 2009), 2.

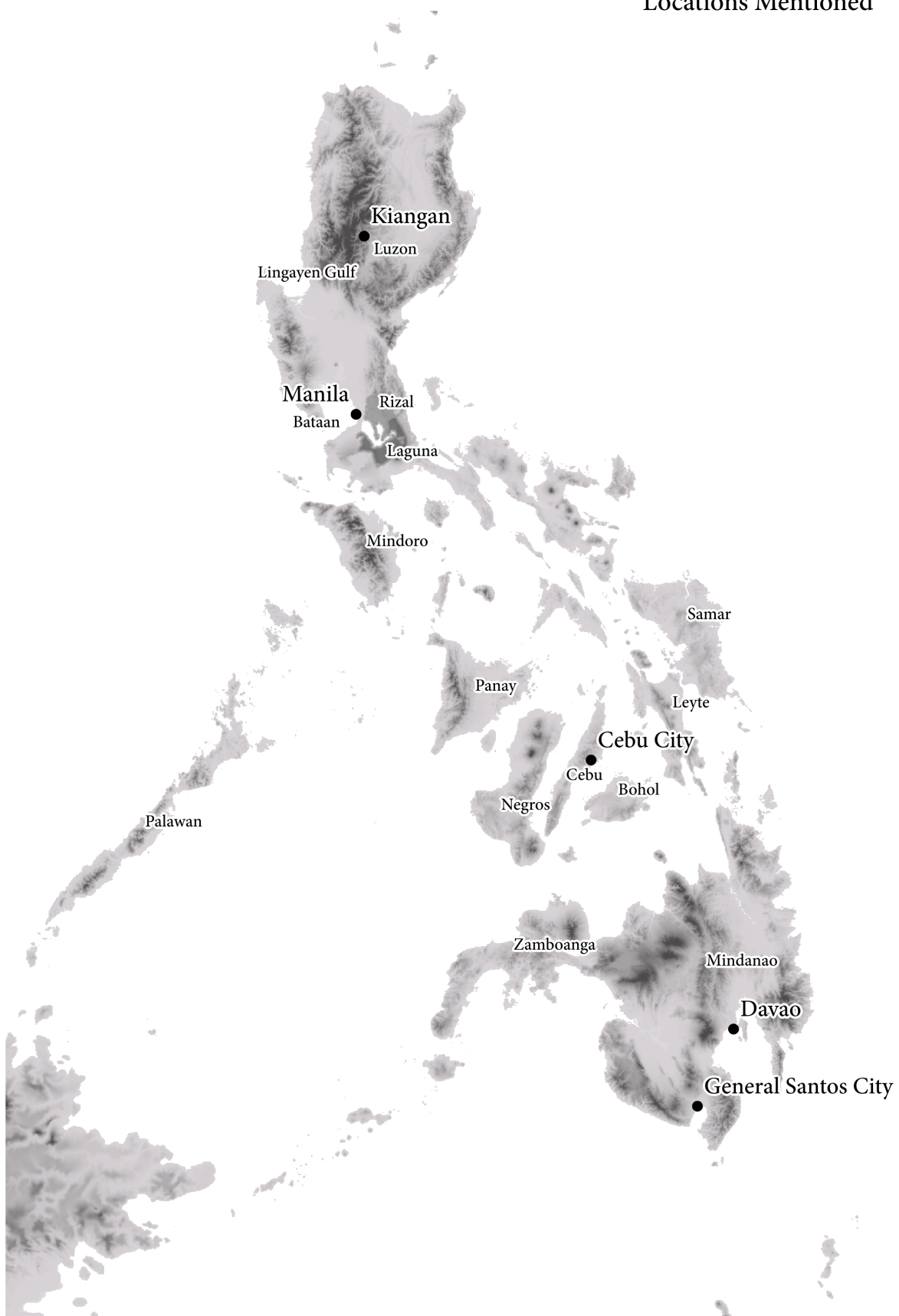
shifting loyalty that emerge in wars and revolution on the other.<sup>23</sup> When treason is replaced by crimes against humanity, it is not just a process of individualization at play, but one of universalization. While that is certainly a move in the direction of non-parochialism, it is true that this transformation has also given rise to a host of debates and critiques of its own. The way forward may not be clear, but at least one thing is. If the continued rise of transitional justice and international humanitarian law threatens the sovereignty of the nation-state, then the decline of treason threatens its soul.

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<sup>23</sup> Ibid., 404.

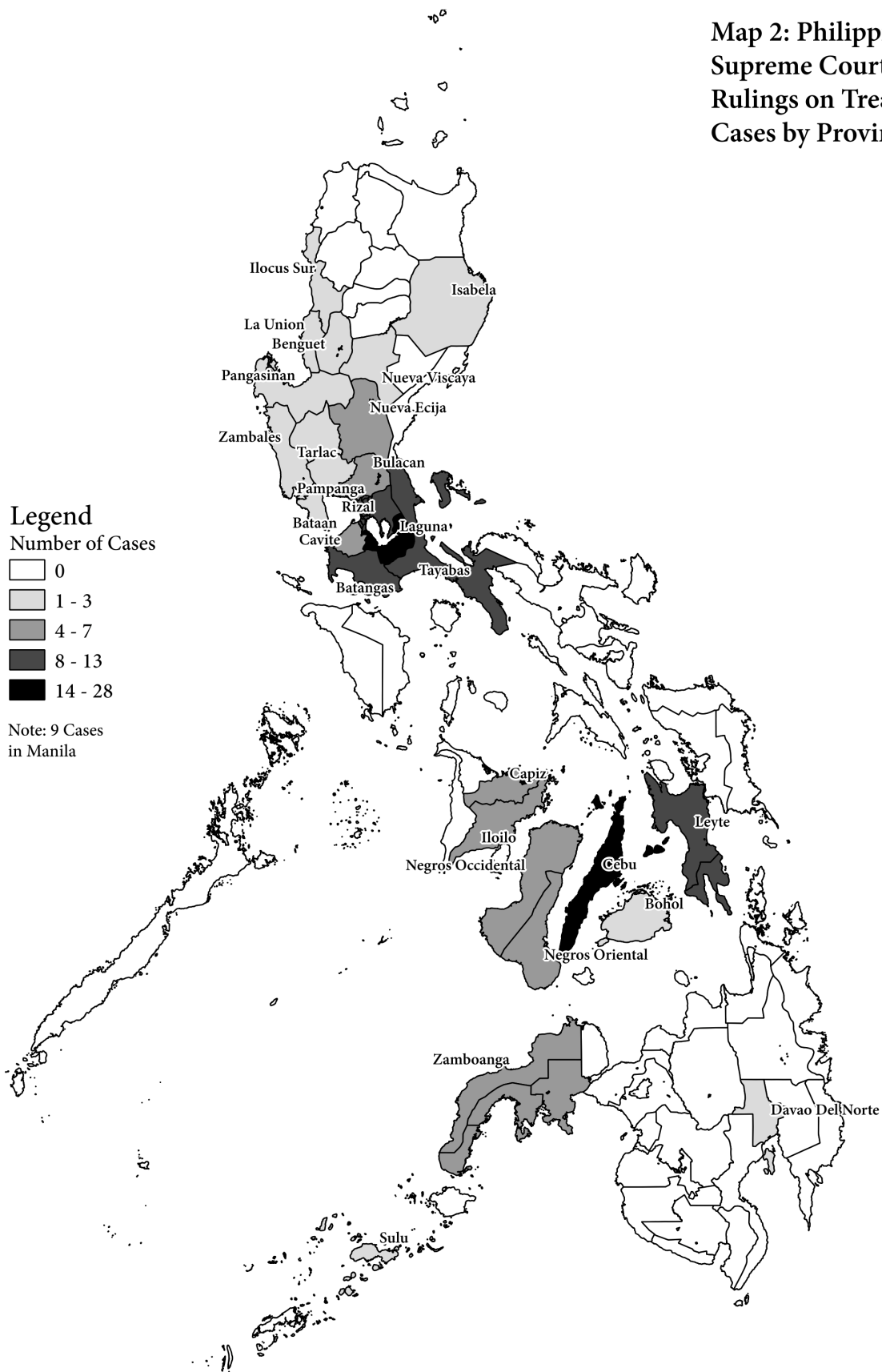
## **Maps and Appendixes**

Map 1: The Philippines,  
Locations Mentioned

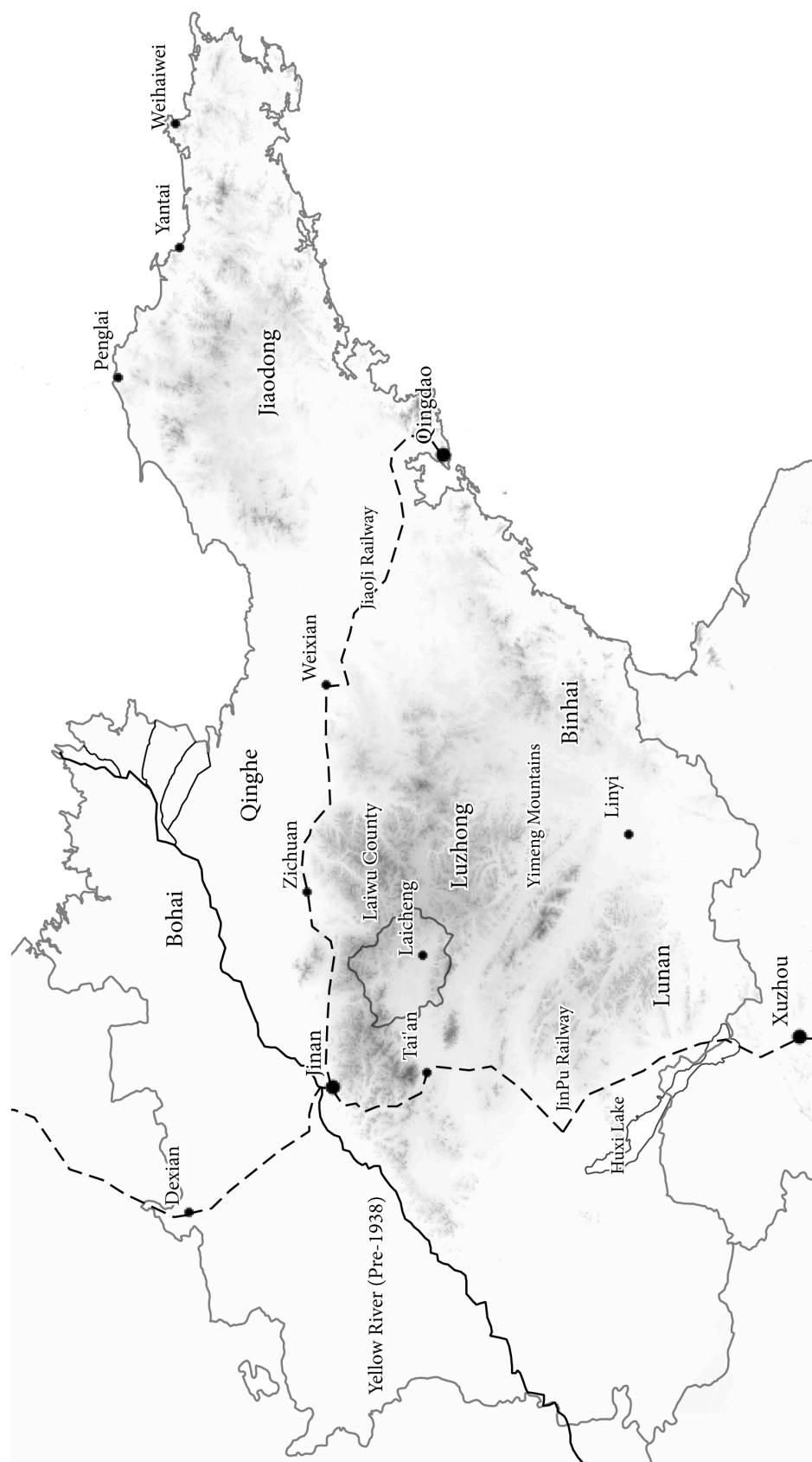




**Map 2: Philippine  
Supreme Court  
Rulings on Treason  
Cases by Province**



Map 3: Shandong Province, China, 1937



## **APPENDIX A: THE PHILIPPINE AMNESTY PROCLAMATION OF 1948**

### **Proclamation No. 51 - A Proclamation Granting Amnesty January 28, 1948**

WHEREAS, the occupation of the Philippines by the Japanese armed forces during the last war and the organization by them of a government administered by citizens of the Philippines but subject to their direction and control have given rise to charges of collaboration with the enemy against such citizens of the Philippines who occupied positions in that government, as well as against those who traded with the enemy;

WHEREAS, as a result of those charges, indictments have been filed against a large number of Filipino citizens for alleged treasonable collaboration with the enemy before the People's Court, which was established especially to hear and try those cases;

WHEREAS, these trials have been held for more than two years now, but no final judgments convicting any one of the accused have been rendered;

WHEREAS, the Supreme Court has declared that the mere holding of a position in the government established by the enemy does not per se constitute the crime of treason under the laws of the Philippines;

WHEREAS, with respect to those who are at present indicted for alleged trading with the enemy, it appears that because aside from the requirements of the two-witness rule in treason trials, it has been declared necessary to prove specifically that the materials involved in the trading were essential to the prosecution of the war, no final judgments of conviction have been entered so far in such cases and, on the contrary, several verdicts of acquittal have been rendered and orders of dismissal issued;

WHEREAS, the majority of the Filipino people now realize that the alleged acts attributed to political collaborators either were not voluntary on their part or, in effect, were performed by them in the sincere belief that it was their patriotic duty to execute them in the interest of the safety and well-being of their countrymen who were then at the mercy of the enemy;

WHEREAS, with the lapse of time there has come a better understanding on the part of the Filipino people of the motives which actuated the persons who held positions under the occupation government, and there is evidence that a majority of the people have fully vindicated the accused, convinced that in the discharge of their functions as public officials they did everything in their power to minimize the atrocities of the enemy and to prevent the carrying out of his purpose to induce or compel the Filipino people to arm themselves against the allied nations;

WHEREAS, under the laws of the Philippines and the doctrines laid down by our courts the

prosecution of the cases now pending appears unjustified with regard to alleged political collaborators and futile as to those charged with economic collaboration;

WHEREAS, the question of collaboration has divided the people of the Philippines since liberation in a manner which threatens the unity of the nation at a time when the public welfare requires that said unity be safeguarded and preserved;

WHEREAS, the question of collaboration is essentially political in nature and should be settled in accordance with the conscience of the majority of the people;

WHEREAS, it appears that the overwhelming sentiment of the people of this Republic is now in favor of resolving this question as speedily as possible by the grant of amnesty to all persons who have been accused or may hereafter be accused of treason through alleged collaboration with the enemy;

WHEREAS, this public sentiment does not extend to persons who voluntarily took up arms against the alleged nations or the members of the resistance forces, or acted as spies or informers of the enemy, or committed murder, arson, coercion, robbery, physical injuries or any other crime defined and punished in our penal laws, for the purpose of aiding and abetting the enemy in the war against the allied nations, or in the suppression of the resistance movement in the Philippines;

NOW, THEREFORE, I, Manuel Roxas, President of the Philippines by virtue of the power in me vested by Article VII, section 10 (6) of the Constitution, so hereby proclaim and grant full and complete amnesty to all persons accused of any offense against the national security for acts allegedly committed to give aid and comfort to the enemy during the last war; provided, however, That this amnesty shall not extend to persons who are now or may hereafter be accused of treason for having taken up arms against the allied nations or the members of the resistance forces, for having voluntarily acted as spies or informers of the enemy, or for having committed murder, arson, coercion, robbery, physical injuries, or any other crime against person or property, for the purpose of aiding and abetting the enemy in the war against the allied nations or in the suppression of the resistance movement in the Philippines.

All cases now pending before the courts for alleged offenses coming within the terms of the amnesty herein granted shall be dismissed by the respective courts on their own motion or upon petition by the prosecution or the accused.

This proclamation shall take effect upon the concurrence therewith by the Congress.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 28th day of January, in the year of Our Lord, nineteen hundred and forty-eight, and of the Independence of the Philippines, the second.

(Sgd.) MANUEL ROXAS

President of the Philippines

By the President:

(Sgd.) N. ROXAS

Acting Executive Secretary

*Source: The Official Gazette* (<http://www.gov.ph/1948/01/28/proclamation-no-51-2/>)

## APPENDIX B: PHILIPPINE SUPREME COURT RULINGS ON TREASON CASES

Case #	Ruling Date	Name	Pardon	Province	Orig. Sentence	Final Sentence	Notes
1317	02/27/48	Abraham Logo	Y	Batangas	Death	Reclusion Perpetua	Joined raid
1163	12/11/47	Adriano Buela	Y	Leyte	12y1d	Affirmed	Ganap
1796	04/27/49	Agapito Arula	Y	Zamboanga	Death	Reclusion Perpetua	Volunteer Guards
2232	04/25/50	Agaton Martin (Borong-Borong)	Y	Rizal	Reclusion Perpetua	Affirmed	Zoning
1502	05/24/48	Agripino Bautista		Manila	Reclusion Perpetua	Acquitted	Makapili
2954	11/16/50	Alejandro Almazora	Y	Laguna	14y8m1d	Affirmed	Makapili
2237	01/31/50	Amado Menor	Y	Tayabas	14y	Reclusion Perpetua	Military police
711	01/28/50	Amado Pañganiban	Y	Batangas	Death	Reclusion Perpetua	Chief of Police
2957	04/27/51	Ambrosio Delgado	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
2205	04/20/50	Anastacio Reyes	Y	Rizal	Reclusion Perpetua	Affirmed	United Nippon (Yoin)
1621	03/29/51	Andrew Bucoy	Y	Zamboanga	20y	Affirmed	Japanese uniform
524	07/02/47	Angel Beato	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
604	12/17/48	Aniceto Aribas		Leyte	Reclusion Perpetua	Affirmed	
1961	12/22/48	Antonio De Los Reyes	Y	Cebu	Reclusion Perpetua	Affirmed	BC
365	01/21/49	Antonio Racaza	Y	Cebu	Death	Reclusion Perpetua	Spy, rape
477	06/30/47	Apolinario Adriano		Manila		Acquitted	
239	06/30/47	Apolonio Carlos	Y	Nueva Ecija	Reclusion Perpetua	Reclusion Perpetua	Makapili
5838	02/09/53	Aquilino Villanueva	Y	Nueva Ecija	16y 1d, then Reclusio	Affirmed	Ganap, Makapili
2321	01/31/50	Arsenia Nuñez	Y	Bataan	Reclusion Perpetua	10y	
820	04/11/50	Aurelio Alvero	Y	Manila	Reclusion Perpetua	Affirmed	Makapili
2239	03/30/50	Aurelio Santiago	Y	Pasig	14y8m1d	Affirmed	Makapili
1654	11/20/48	Bartolome Aguilar	Y	Cebu	Reclusion Perpetua	Affirmed	
2162	09/30/49	Benito Tuason	Y	Rizal	20y	Reclusion Perpetua	Makapili
1805	01/31/49	Benjamin Albano	Y	Nueva Vizcaya	Reclusion Perpetua	Affirmed	
2311	05/21/51	Benjamin Nadurata		Negros Orient.	Reclusion Perpetua	Acquitted	BC
1305	06/24/49	Bernabe Galo	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
4549	10/22/52	Bienvenido Capistrano	Y	Tayabas	Reclusion Perpetua	4y	Yoin, rape
406	01/07/49	Bienvenido Garcia (Domingo Garcia)	Y	Pampanga	Reclusion Perpetua	Reclusion Perpetua	
2236	05/16/51	Blas Cruz	Y	Rizal	14y8m1d	Affirmed	Makapili
1974	03/30/49	Candido Ingalla	Y		Death	Reclusion Perpetua	
369	03/13/47	Carmelito Victoria	Y	Tayabas	Death	Reclusion Perpetua	Makapili

## Appendix B, cont.

Case #	Ruling Date	Name	Pardon	Province	Orig. Sentence	Final Sentence	Notes
1570	12/29/50	Casiano Cardenas	Y	Cebu	14y, then Reclusion P 14y		Joined raid
2063	06/24/49	Ceferino Bartiquin	Y	Leyte	Reclusion Perpetua	Affirmed	Joined raid
1677	01/28/49	Cirilo Humarang	Y	Cebu	Reclusion Perpetua	Reclusion Perpetua	
456	03/29/49	Cucufate Adlawan	Y	Cebu	Death	Reclusion Perpetua	Interpreter
407	07/28/47	Daniel Alarcon	Y	Bulacan	Reclusion Perpetua	Affirmed	Makapili
985	01/23/48	Dionisio Agoncillo		Cebu	Reclusion Perpetua	Acquitted	
943	11/22/47	Domingo Capacete	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
1035	07/15/48	Doroteo Abarintos	Y	Batangas	Reclusion Perpetua	Affirmed	Makapili
2315	12/29/50	Doroteo Abatayo		Negros Occid.	15y	Affirmed	BC
399	01/29/48	Eduardo Prieto	Y	Cebu	Death	Reclusion Perpetua	Joined raid
905	03/09/49	Eladio Pacatang	Y	Bohol	Death	Reclusion Perpetua	
1678	11/10/50	Eleuterio Caña	Y	Leyte	15y	Affirmed	Joined raid
2956	05/23/51	Eleuterio Icaro	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
2064	05/12/49	Eligio Torres	Y	Zamboanga	Death	Reclusion Perpetua	
2313	01/10/51	Ernesto Quillooy (Jesus)	Y	Batangas	Reclusion Perpetua	Affirmed	Yoim
1373	06/27/49	Eufronio Visagar	Y	Laguna	Fine	Affirmed	Makapili
1825	05/26/49	Eugenio Bersida	Y	Negros Orient.	Death	Reclusion Perpetua	Joined raid
1291	11/02/48	Eugenio Escosura	Y	Bohol	Reclusion Perpetua	Affirmed	Military police
4041	08/30/52	Eugenio Gutierrez	Y	Laguna	Reclusion Perpetua	Affirmed	finger pointer
1838	01/07/49	Exequiel Lacanlale	Y	Cebu	Reclusion Perpetua	Affirmed	BC
1731	01/31/50	Faustino Flores		Cebu	Acquitted		Joined raid
944	05/26/49	Fausto Avila	Y	Isabela	Reclusion Perpetua	Affirmed	Makapili
3395	08/11/50	Federico Mercado	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
1624	01/31/50	Felipe Reyes		Negros Occid.	Acquitted		
986	01/26/49	Felix Alcover	Y	Cebu	Reclusion Perpetua	12y	BC
2537	01/10/51	Fernando Martin (Vasques)	Y	Laguna	Death	Reclusion Perpetua	Makapili
1446	03/04/49	Filemon Delgado	Y	Cebu	Death	Reclusion Perpetua	Joined raid
1006	06/28/49	Filemon Escleto		Tayabas	Acquitted		Makapili
300	01/28/49	Filomento Castro	Y	Cebu	Reclusion Perpetua	Affirmed	BC
1588	11/26/48	Florencio Alibotod	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
2193	02/01/50	Florentino Canibas	Y	Batangas	Reclusion Perpetua	Affirmed	Makapili
4408	10/30/51	Francisco Castillo	Y	Bulacan	20y	Reclusion Perpetua	Makapili
1553	10/25/49	Francisco Concepcion	Y	Cebu	Reclusion Perpetua	Affirmed	
1975	12/21/50	Francisco De Los Santos	Y	Zamboanga	Death	Reclusion Perpetua	Joined raid

## Appendix B, cont.

Case #	Ruling Date	Name	Pardon	Province	Orig. Sentence	Final Sentence	Notes
2000	01/31/50	Francisco Deduyo		Rizal	Reclusion Perpetua	Affirmed	Makapili
430	07/30/47	Francisco M. Abad	Y	Tarlac	Death	14y8m1d	Informers, spy with Makapili
1733	04/29/50	Gabino R. Tuason	Y	Rizal	Reclusion Perpetua	12y1d	BC
433	03/02/49	Gaudencio Roble	Y	Cebu	Death	Reclusion Perpetua	Dual citizen
1585	02/10/49	George E. Rice		Manila	Reclusion Perpetua	Acquitted	Police, Joined raid
3385	12/29/50	Graciano Espiritu	Y	Tarlac	Reclusion Perpetua	Affirmed	Jutai
1591	01/20/49	Gregorio Refuerzo	Y	Leyte	Bulacan	17y4m	Joined raid
1473	10/27/48	Hervasio Irisuillo	Y	Iloilo	Death	Reclusion Perpetua	Joined raid
2255	04/18/50	Higino Sigue	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili, Ganap
2065	01/31/50	Hilarion Jardinico	Y	Tayabas	Death	Reclusion Perpetua	Military police
1034	07/15/48	Honorato Espiritu	Y	Laguna	15y	Affirmed	Makapili
3775	07/31/51	Hospico Labata		Leyte	Reclusion Perpetua	Acquitted	Joined raid
3648	11/29/51	Idris Amilhusin (Datu Idris)		Sulu	Reclusion Perpetua	Affirmed	Joined raid
432	05/23/49	Ignacio Calinawan	Y	Cebu	Death	8y1d to 14y8m1d	
2231	05/16/50	Inocencio Bernardo	Y	Rizal	14y	Reclusion Perpetua	Citizenship contested
945	07/12/48	Isidro Pagua	Y		Reclusion Perpetua	Affirmed	
1789	07/29/49	Ismael Aquivido	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
1288	01/25/49	Jacinto Pineda	Y	Tayabas	Reclusion Perpetua	Affirmed	Joined raid
3216	09/18/51	Jacinto Sortijas	Y	Cavite	Reclusion Perpetua	Affirmed	Makapili
2059	03/30/51	Jesus Astrologo	Y	Negros Occid.	Reclusion Perpetua	Affirmed	Informers
2331	05/13/59	Jesus Campos		Cebu	Reclusion Perpetua	Affirmed	Joined raid
2998	05/23/51	Joaquin Flavies	Y	Tayabas	Reclusion Perpetua	Affirmed	Yoin
547	01/28/49	Jose De Castro		Bulacan	Reclusion Perpetua	Acquitted	Ganap
1565	01/09/51	Jose Dimzon	Y	Iloilo	20y	Affirmed	
923	06/24/49	Jose Dizon		Pangasinan	Reclusion Perpetua	Affirmed	BC
1138	12/17/47	Jose Fernando	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
1080	06/27/49	Jose Javier Almodovar	Y	Rizal	Reclusion Perpetua	Affirmed	Ganap
895	12/31/47	Jose Luis Godinez		Cebu		Acquitted	
5194	11/20/52	Jose Ortega	Y	Bulacan	14y8m1d	Affirmed	with Makapili
1296	03/06/50	Jose Palicte		Cebu	15y	Acquitted	Interpreter
6277	02/26/54	Juan D. Crisologo		Zamboanga		Dismissed	
1622	12/02/48	Juan Lansanas	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
1213	04/06/48	Juanito Labitan Vindua	Y	Zambales	Reclusion Perpetua	Affirmed	Military police
885	10/30/47	Julio Garcia	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili, Sakdalistas



## Appendix B, cont.

Case #	Ruling Date	Name	Pardon	Province	Orig. Sentence	Final Sentence	Notes
2997	06/29/51	Lamberto San Juan	Y	Tayabas	Reclusion Perpetua	Affirmed	Makapili
5360	01/30/53	Leandro Dimapilis		Batangas	15y	Affirmed	Makapili
710	03/05/48	Leandro Gonzales		Batangas	Reclusion Perpetua	Acquitted	Makapili
1676	01/31/50	Leon Gutierrez		Rizal		Acquitted	Magic Eye
5361	02/24/53	Leonidas Rasay		Davao	12y1d	Affirmed	Police, woman, joined raid
4533	05/28/52	Lorenzo Morales	Y	Ilocos Sur	20y	Affirmed	Makapili
2256	07/06/50	Luis Navea		Laguna	Reclusion Perpetua	Affirmed	Japanese uniform
4260	01/21/52	Macario Bautro	Y	Batangas	12y1d	Reclusion Perpetua	Makapili
2959	05/28/51	Marcelo Almazora		Laguna	14y8m1d	Affirmed	Makapili
2317	12/12/51	Marcelo Gorospe	Y	Iloilo	12y1d	Reclusion Perpetua	Joined raid
1549	11/02/48	Margarito Campos (Dodong)	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
364	04/25/49	Mariano T. Jaucian	Y	Cebu	Death	Reclusion Perpetua	Mob violence in the court
2289	06/22/50	Martin Laurel	Y	Laguna	Reclusion Perpetua	Affirmed	wearing Japanese uniform
2323	01/09/51	Matias Almazan	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili, Ganap, Sakdal
1547	01/28/49	Maximo Bate	Y	Leyte	Reclusion Perpetua	No retrial	BC
4570	07/31/53	Maximo Pacheco (Emong, Guemo)		Manila	Reclusion Perpetua	Affirmed	Makapili
744	09/01/47	Maximo Solon	Y	Cebu	Death	Reclusion Perpetua	Military police
1441	04/07/49	Miguel M. Moreno	Y	Zamboanga	Death	Reclusion Perpetua	Naval auxiliary
778	10/10/47	Nemesio L. Agpangan		Laguna	Reclusion Perpetua	Acquitted	Ganap, Makapili
3607	08/27/53	Norberto E. Bernardino		Zambales	12y1d	Affirmed	Ganap
593	01/19/48	Pablo Alejo	Y	Leyte	Reclusion Perpetua	Affirmed	Home guard
1485	08/30/49	Pablo Deslate	Y	Iloilo	Reclusion Perpetua	Reclusion Perpetua	Coastal Defense Corps
886	08/10/48	Pablo Labra	Y	Cebu	Death	Reclusion Perpetua	Military police
869	02/09/48	Pastor Tan Mateo	Y	Negros Orient.	15y	Affirmed	Spy
2958	03/16/51	Patricio Rosas	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
2156	01/31/50	Pedro Antoinio	Y	Rizal	Reclusion Perpetua	Affirmed	Magic Eye
857	10/19/48	Pedro Labra	Y	Cebu	Reclusion Perpetua	Affirmed	Joined raid
322	07/28/47	Pedro Manayao et al	Y	Nueva Ecija	Death	Reclusion Perpetua	Makapili
953	09/18/47	Pedro Marcaida		Tayabas	Reclusion Perpetua	Acquitted	Yoin
1298	05/31/49	Pedro Santos Balingit	Y	Manila	Reclusion Perpetua	Affirmed	Joined raid
9529	08/30/58	Pedro T. Villanueva	Y	Iloilo	Death	Reclusion Perpetua	Rape, detective
397	11/23/48	Pilar Barrera De Reyes		Laguna	Reclusion Perpetua	Acquitted	Finger pointer
1225	12/17/47	Pio Anulat	Y	Manila	Reclusion Perpetua	Affirmed	Informant
743	10/11/49	Policarpio Dumapit		Zambales	Reclusion Perpetua	Acquitted	BC

## Appendix B, cont.

Case #	Ruling Date	Name	Pardon	Province	Orig. Sentence	Final Sentence	Notes
2688	02/27/50	Primitivo Osi	Y	Tayabas	Reclusion Perpetua	Affirmed	Makapili, Sakdalistas
2316	03/05/51	Ricardo Beato	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
1516	12/02/48	Ricardo de Los Reyes		Manila	Reclusion Perpetua	Reclusion Perpetua	Special police agent
1655	01/31/50	Roberto Bautista	Y	Rizal	Reclusion Perpetua	Affirmed	Magic Eye
1656	01/07/49	Roman Vilo	Y	Manila	Death	<b>Death</b>	Joined raid
4618	03/28/52	Romeo Golez	Y	Negros Occid.	20y	Affirmed	Joined raid
565	06/27/49	Roque Badili	Y	Cebu	Reclusion Perpetua	17y4m	Military police
1489	03/17/49	Rufino Lupera	Y	Rizal	Reclusion Perpetua	Affirmed	
1546	03/06/50	Rufino Suralta	Y	Leyte	Death	Reclusion Perpetua	BC
758	05/12/48	Rustico Noblezala		Negros Orient.	15y	Acquitted	
1388	07/14/48	Segundo Ubaldo	Y	Laguna	Reclusion Perpetua	Affirmed	
1548	03/29/49	Severo Bascon	Y	Cebu	Reclusion Perpetua	Affirmed	BC
856	04/18/49	Susano Perez (Kid Perez)	Y	Cebu	Death	Acquitted of treason	Sexual slavery
1922	04/27/51	Teodorico Matias	Y	Zamboanga	15y	Affirmed	Naval auxiliary
2584	03/25/50	Teodoro Barremeda		Batangas	Reclusion Perpetua	<b>Death</b>	Makapili
1661	04/28/49	Teodoro Cantos (Teodoro Tatishi)	Y	Bohol	Death	Reclusion Perpetua	BC, citizenship contested
4414	12/12/51	Teodoro Pinuela	Y	La Union	20y	Reclusion Perpetua	Joined raid
2318	03/31/50	Teofilo Paar (Pajar, Ben Pajar)	Y		Reclusion Perpetua	17y4m1d	Military police
924	08/30/47	Tiburcio Alitagtag	Y	Laguna	Reclusion Perpetua	Affirmed	Makapili
3235	11/17/50	Tomas Taruma (Tomas Manuel)	Y	Nueva Ecija	12y1d	Affirmed	Joined raid
855	04/28/49	Troadio Butawan	Y	Davao	Death	Reclusion Perpetua	joined Japanese army
2235	01/31/50	Urbano Marasigan	Y	Cavite	Reclusion Perpetua	17y	Finger pointer
262	03/29/47	Valentin Trinidad Bagalawis	Y	Cavite	Reclusion Perpetua	Reclusion Perpetua	
1653	01/28/49	Vicente Tumandao		Cavite	Reclusion Perpetua	Acquitted	Informant

**Note:** Cases marked with “Makapili” etc. merely indicates that membership was alleged, often without any evidence. Judges frequently dropped such charges.

**Source:** Supreme Court rulings hosted by the Lawphil Project (Arellano Law Foundation) at <http://lawphil.net/>

# APPENDIX C: PUPPET ARMIES AND OTHER COLLABORATORS ACTIVE IN SHANDONG, SUMMER 1945

Title or Unit	Title or Unit	Chinese Name	Pinyin
(Puppet) prov. governor, Jinan pacification director	偽省長兼濟南綏靖主任	楊毓珣	Yang Yuxun
Dengzhou <i>daoyin</i> (circuit intendant), peace preservation unit commander	偽登州道尹兼保安隊指揮	白書普	Bai Shupu
Laiwei <i>daoyin</i> , <i>baoundui</i> (peace preservation unit) commander	偽萊蕪道尹兼保安隊指揮	王子楓	Wang Zifeng
Jinan <i>daoyin</i> , <i>baoundui</i> commander	偽濟南道尹兼保安隊指揮	宋介	Song Jie
Tai'an <i>daoyin</i> , <i>baoundui</i> commander	偽泰安道尹兼保安隊指揮	吳仲軒	Wu Zhongxuan
Yizhou <i>daoyin</i> , <i>baoundui</i> commander	偽沂州道尹兼保安隊指揮	王峰青	Wang Fengqing
Wuding <i>daoyin</i> , <i>baoundui</i> commander	偽武定道尹兼保安隊指揮	劉佩臣	Liu Peichen
Mayor of Jinan	偽濟南市長	程鎔	Cheng Rong
Mayor of Qingdao and <i>baoundui</i> captain	偽青島市長兼保安總隊隊長	楊作禮	Yang Zuoli
Head officer of the Qingzhou Spec. Admin. Area and <i>baoundui</i> commander	偽青州特別行政長官兼保安指揮	常子英	Chang Ziyang
ZhuJuYiRi office chief	偽諸莒沂日辦事處處長	張福	Zhang Fu
Zhangdian commissioner	偽張店專員	潘正仁	Pan Zhengren
Weihai commissioner	偽威海專員	徐瑞卿	Xu Ruiqing
Mayor of Yantai	偽煙臺市長	邵中樞	Shao Zhongshu
Mayor of Haizhou	偽海州市長	邵競生	Shao Jingsheng
Huaihai prefectural governor and Xuzhou pacification director	偽淮海省省長兼徐州綏靖主任	郝鵬舉	Hao Pengju
Huaihai pref. section 6 commissioner and peace preservation commander	偽淮海省第六區專員兼保安司令	畢書文	Bi Shuwen
Mayor of Xuzhou	偽徐州市長	李鐵民	Li Tiemin
Shandong People's Self-Defense Army Commander	偽山東國民自衛軍總司令	張宗援	Zhang Zongyuan
- Vice Commander	偽山東國民自衛軍副司令	張步雲	Zhang Buyun
- 1st Army Group Commander	偽山東國民自衛軍第一集團軍團長	張步雲	Zhang Buyun
- 1st Army Group 1st Army Commander	偽山東國民自衛軍第一團軍第一軍軍長	張步雲	Zhang Buyun
- 1st Army Group 1st Army 2nd Division Commander	偽山東國民自衛軍第一團軍第一軍二師師長	張天和	Zhang Tianhe
- 1st Army Group 1st Army 3rd Division Commander	偽山東國民自衛軍第一團軍第一軍三師師長	郭毅三	Guo Jisan
- 1st Army Group 2nd Army Commander	偽山東國民自衛軍第二團軍第二軍軍長	黃愛軍	Huang Aijun
- 1st Army Group 2nd Army 1st Division Commander	偽山東國民自衛軍第二團軍第二軍一師師長	姚子棟	Yao Zidong
- 1st Army Group 2nd Army 2nd Division Commander	偽山東國民自衛軍第二團軍第二軍二師師長	牟俊峰	Mou Junfeng
- 1st Army Group 2nd Army 3rd Division Commander	偽山東國民自衛軍第二團軍第二軍三師師長	紀淑和	Ji Shuhe
- 1st Army Group 2nd Army 11th Division Commander	偽山東國民自衛軍第二團軍第二軍十一師師長	張鬆山	Zhang Songshan
- 1st Army Group 2nd Army 4th Brigade Commander	偽山東國民自衛軍第二團軍第二軍四旅旅長	李厚基	Li Houji
- 1st Army Group 2nd Army 5th Brigade Commander	偽山東國民自衛軍第二團軍第二軍五旅旅長	( ? )	
Ludong (East Shandong) Peace and National Construction Army Comm.	魯東和平建國軍司令	歷文禮	Li Wenli
- Vice Commander, 1st Brigade Commander	魯東和平建國軍副司令兼一旅旅長	申集安	Shen J'ian
- Special Operation Unit Commander	魯東和平建國軍特務團長	胡鼎三	Hu Dingsan
- 1st Brigade Commander, 2nd Regiment Commander	魯東和平建國軍一旅代旅長兼二團團長	李洪澡	Li Hongzao

## Appendix C, cont.

- 3rd Detachment Commander	魯東和平建國軍三支隊長	王有為	Wang Youwei
- 4th Detachment Commander	魯東和平建國軍四支隊長	錢永榮	Qian Yongtang
- 5th Detachment Commander	魯東和平建國軍五支隊長	曹剋明	Cao Keming
- 5th Regiment Commander	魯東和平建國軍五團團長	張天佐	Zhang Tiansuo
- 11th Detachment Commander	魯東和平建國軍十一支隊長	蔡驚宇	Cai Jingyu
- 3rd Independent Regiment Commander	魯東和平建國軍獨立三團長	單紀洲	Dan Jizhou
- New 10th ???	魯東和平建國軍新十???	王子春	Wang Zichun
Provisional Reorganized 10th Army Commander	偽暫編第十軍軍長	博加強	Bo Jiaqiang
Provisional Reorganized 18th Brigade Commander	偽陸軍暫編十八旅旅長	楊步仁	Yang Buren
8th Pacification Regiment Commander	偽綏靖第八集團軍軍團長	王鐵相	Wang Tiexiang
1st Pacification Regiment Commander	偽綏靖第一集團軍軍團長	孫風祖	Sun Fengzu
Binhai Garrison Commander	偽濱海警備軍司令	李香齋	Li Xiangzhai
Wuding circuit Assist the Emperor Protect the People Army	偽武定道皇協護民軍	劉佩臣	Liu Peichen
- 1st Division Commander	偽武定道皇協護民軍一師師長	田敬唐	Tian Jingtang
- 1st Division Brigade Commander	偽武定道皇協護民軍一師旅長	張少忱	Zhang Shaochen
- 1st Division Brigade Commander	偽武定道皇協護民軍一師旅長	李光明	Li Guangming
- 2nd Division Commander	偽武定道皇協護民軍二師師長	劉樹功	Liu Shugong
- 3rd Division Commander	偽武定道皇協護民軍三師師長	成建基	Cheng Jianji
- 4th Division Commander	偽武定道皇協護民軍四師師長	韓存忠	Han Cunzhong
- 5th Division Commander	偽武定道皇協護民軍五師師長	王福成	Wang Fucheng
Ludong Assist the Emperor Army	偽魯東皇協軍	張景儒	Zhang Jingru
Provincial Peace Preservation Unit Number 2	偽省保安第二總隊	李法傳	Li Fachuang
Jinan circuit Assist the Emperor Army	偽濟南道皇協軍	岳伯芬	Yue Bofen
Wuding circuit Assist the Emperor Army	偽武定道皇協軍	張子良	Zhang Ziliang
Linzi Garrison Brigade	偽臨淄警備旅	王硯田	Wang Yantian
Eradicate Communist National Construction Army 1st Regiment	偽滅共建國軍第一團	李青山	Li Qingshan
Eradicate Communist National Construction Army 2nd Regiment	偽滅共建國軍第二團	王金生	Wang Jinsheng
Eradicate Communist National Construction Army 3rd Regiment	偽滅共建國軍第三團	周勝芳	Zhou Shengfang
3rd Sector Army (?) Unit	偽第三方面軍留魯部隊	張景月	Zhang Jingyue
3rd Sector Army Independent Brigade	偽第三方面軍獨立旅	高鬆坡	Gao Songpo
Peace and National Construction Army	偽和平建國軍	王尚志	Wang Shangzhi
Qingdao Special District Assist the Emperor Army	偽青島特別區皇協軍	李先良	Li Xianliang
Yizhou circuit Assist the Emperor Army	偽沂州道皇協軍	王洪九	Wang Hongjiu
Lunan (Southern Shandong) Assist the Emperor Army	偽魯南皇協軍	張裡元	Zhang Liyuan
Assist the Emperor Army 25th Brigade	偽皇協軍保二十五旅	鞏振寰	Gong Zhenhuan
Assist the Emperor Army 8th Brigade	偽皇協軍保八旅	劉憲焯	Liu Xianchao
Assist the Emperor Army 2nd Division	偽皇協軍保二師	申從周	Shen Congzhou

Appendix C, cont.

Tancheng Eliminate Communism Army  
Jiao County 1st Self-Protection Regiment  
Huaihai prefecture 35th Division  
Huaihai prefecture Assist the Emperor Army

偽郟城剿共軍  
偽膠縣自衛第一團  
偽淮海省第三十五師  
偽淮海省皇協軍

Hu Dengqi  
Zhang Hongfei  
Zheng Jiduan  
Guo Xiaxuan

**Note:** This does not include many puppet armies that retreated out of the province in 1944-5 that later re-entered Shandong after Japanese surrender  
**Source:** 山東省檔案館 山東革命歷史檔案資料選編 vol. 15, 207.

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*Note:* Sgt. Paul R. Malbuisson was a CIC officer in the Philippines in the early aftermath of the U.S. landing there in 1944. Roger Malbuisson maintains a website about his father at <http://201cic.com/roster/malbuisson/index.html>

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*Note:* Documents beginning with “G” are revolution archive files and are usually Communist Party documents of the 1930s-1940s. Documents beginning with “J” are from its “enemy and puppet” materials and may originate from captured Japanese occupation government files, collaborationist government files, or files of the Nationalist government and its military.

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